COMMONWEALTH of VIRGINIA
Board of Education Agenda

Date of Meeting: September 26, 2007 **Time:** 9:00 a.m.
Location: Jefferson Conference Room, 22nd Floor, James Monroe Building
101 North 14th Street, Richmond, Virginia

9:00 a.m. FULL BOARD CONVENES `

Moment of Silence

Pledge of Allegiance

Approval of Minutes of the July 25, 2007, Meeting of the Board

Public Comment

Action/Discussion on Board of Education Regulations

A. First Review of the Proposed Revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.)

B. Final Review of Proposed Revisions to the *Standards for Interdepartmental Regulation of Residential Facilities for Children* (22 VAC 42-10-10 et seq.)

Action/Discussion Items

C. Final Review of a Request for Increased Graduation Requirements from Russell County Public Schools

D. First Review of Request for an Alternative Accreditation Plan from Danville Public Schools for J. M. Langston Focus School

E. First Review of Requests from Nineteen School Divisions for Ratings of Conditionally Accredited

F. First Review of a Request for a Continued Rating of Conditionally Accredited from Sussex Public Schools for Annie B. Jackson and Ellen P. Chambliss Elementary Schools

G. Final Review of the Board of Education's Comprehensive Plan: 2007-2012

Action/Discussion Items (continued)

H. First Review of the 2007 Annual Report on Regional Alternative Education Programs

I. First Review of a Report on the Federal No Child Left Behind Act Waiver Requests Made by the Virginia Board of Education (SB 1212 and HB 2542)

J. First Review of a Nomination to Fill a Vacancy on the Advisory Board for Teacher Education and Licensure

K. First Review of Proposed Board of Education Meeting Dates for the 2008 Calendar Year

L. First Review of Recommendations for Adoption of an English Language Proficiency Assessment to be Administered in 2008-2009

Reports

M. Report from the State Special Education Advisory Committee

N. Report on Postsecondary Readiness Studies Authorized by the Board of Education

DISCUSSION OF CURRENT ISSUES - by Board of Education Members and Superintendent of Public Instruction

ADJOURNMENT

PUBLIC NOTICE

The Board of Education members will meet for dinner at 6:30 p.m. at the Crowne Plaza Hotel on Tuesday, September 25, 2007. Items for the Board agenda may be discussed informally at that dinner. No votes will be taken, and it is open to the public. The Board president reserves the right to change the times listed on this agenda depending upon the time constraints during the meeting.

GUIDELINES FOR PUBLIC COMMENT

1. The Board of Education is pleased to receive public comment at each of its regular monthly meetings. In order to allow the Board sufficient time for its other business, the total time allotted to public comment will generally be limited to thirty (30) minutes. Individuals seeking to speak to the Board will be allotted three (3) minutes each.

2. Those wishing to speak to the Board should contact Dr. Margaret Roberts, Executive Assistant for Board Relations at (804) 225-2924. Normally, speakers will be scheduled in the order that their requests are received until the entire allotted time slot has been used. Where issues involving a variety of views are presented before the Board, the Board reserves the right to allocate the time available so as to insure that the Board hears from different points of view on any particular issue.

3. Speakers are urged to contact Dr. Roberts in advance of the meeting. Because of time limitations, those persons who have not previously registered to speak prior to the day of the Board meeting cannot be assured that they will have an opportunity to appear before the Board.

4. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views.

Board of Education Agenda Item

Item: A. **Date:** September 26, 2007

Topic: First Review of the Proposed Revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.)

Presenter: Mr. H. Douglas Cox, Assistant Superintendent for Special Education and Student Services

Telephone Number: (804) 225-3252 **E-Mail Address:** **Doug.Cox@doe.virginia.gov**

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
- _X_ State or federal law or regulation
- ____ Board of Education regulation
- ____ Other: _____

_X_ Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

____ No previous board review/action

_X_ Previous review/action
date October 25, 2006
action Approval of the Notice of Intended Regulatory Action (NOIRA)

Background Information:

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to "prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities" between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must "be designed to ensure that all children with disabilities have available to them a free and appropriate education." The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to "promulgate such regulations as may be necessary to carry out its powers and duties…."

The current *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-80-10 et seq.) were adopted by the Board of Education on October 19, 2000, and became effective in January 2001. Technical changes proposed by the U.S. Department of Education were approved by the Board of Education on February 5, 2002, and became effective March 27, 2002.

The revision of the state regulations governing special education is required to ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these

federal mandates is required to ensure Virginia's continued eligibility for federal special education funding, which will total $273.1 million in 2007-2008.

In accordance with the Virginia Administrative Process Act, on January 22, 2007, a Notice of Intended Regulatory Action (NOIRA) was published in the *Virginia Register of Regulations* to advise the public of the Board of Education's intent to conduct a comprehensive review of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-80-10 et seq.). During the subsequent public comment period, 164 submissions were received, containing a total of 1,767 individual comments.

In addition, on December 14, 2006, a meeting of stakeholders was convened. The stakeholders, who represent a cross-section of constituencies impacted by the current regulations, discussed the current federal and state special education mandates and areas of concern.

The information received via public comment and the stakeholders' meeting was reviewed and considered during the development of the attached proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In addition, the changes were guided by the federal mandate outlined in 34 C.F.R. § 300.199(a)(3), which requires that States "minimize the number of rules, regulations, and policies to which [local educational agencies] are subject under Part B of the Act."

Summary of Major Elements

Due to the comprehensive nature of the revisions, the current regulations (8 VAC 20-80-10 et seq.) will be repealed, and new regulations will be promulgated by the Board of Education (8 VAC 20-81-10 et seq.). Detail regarding the proposed changes to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* is outlined on pages 6 – 32 of the attached Virginia Regulatory Town Hall form.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the proposed *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* and authorize staff of the Department of Education to proceed with the requirements of Virginia's Administrative Process Act, including the 60-day public comment period.

Impact on Resources:

The impact on resources for the review and revision of these regulations is not expected to be significant.

Timetable for Further Review/Action:

The timetable for further actions will be governed by the requirements of the Administrative Process Act.

Virginia
Regulatory
Town Hall

townhall.virginia.gov

Proposed Regulation
Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-81
Regulation title	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Revisions to comply with the "Individuals with Disabilities Education Improvement Act of 2004" and its federal implementing regulations
Date this document prepared	August 30, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The present action proposes substantive changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-80) and promulgate new regulations (8 VAC 20-81). Substantive new changes are proposed for the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Referral for evaluation; 3) Eligibility determinations; 4) The development, review and revision of a student's individualized education program (IEP); 5) Parentally-placed private school students; 6) Discipline; 7) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 8) Local educational agency administration and governance; 9) Funding; and 10) The requirements regarding highly qualified personnel.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to "prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities" between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must "be designed to ensure that all children with disabilities have available to them a free and appropriate education." The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to "promulgate such regulations as may be necessary to carry out its powers and duties…."

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2007-2008, Virginia expects to receive $273.1 million in federal special education funding.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The revision of these regulations is essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia's state special education regulations are aligned with federal requirements, VDOE will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

The revision process will also strive to ensure consistency by incorporating requirements of the *Code of Virginia* and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity from the previous set of regulations.

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately $273.1 million in 2007-2008.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8 VAC 20-80) are being repealed and concurrently replaced with new regulations (8 VAC 20-81). Substantive new changes are proposed for the following areas: 1) Functions of the Virginia Department of Education; 2) Referral for evaluation; 3) Eligibility determinations; 4) The development, review and revision of a student's individualized education program (IEP); 5) Parentally-placed private school students; 6) Discipline; 7) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 8) Local

educational agency administration and governance; 9) Funding; and 10) The requirements regarding highly qualified personnel.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia's continued eligibility for federal special education funding. In 2007-2008, federal funding will provide approximately $242.3 million in direct funding to local school divisions to support special education programs, and provide an additional $30 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

There are no identifiable disadvantages to the general public, the agency, or the Commonwealth for revising these regulations.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

See Attachment #1.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No individual locality will bear any identified disproportionate material impact from the proposed revisions. Rather, all local educational agencies will be affected by the recommended changes.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Virginia Board of Education is seeking comments on the following:

- The costs and benefits of the proposal and the potential impacts of this regulatory proposal. Information may include 1) projected reporting, recordkeeping and other administrative costs, and 2) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation; and
- Benefits and concerns of the new eligibility criteria proposed in 8 VAC 20-81-80, including any recommended changes or deletions to those provisions.

Anyone wishing to submit written comments may do so by mail to Melissa C. P. Smith, Coordinator of Administrative Services, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120; by fax at 804-786-8520, attention: "Regulations Revision Process"; or by e-mail at **ReviseSpedRegs@doe.virginia.gov.** Staff may be contacted by telephone at 804-225-2013. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

Public hearings will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall Web site (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Notice of the public hearings will also be posted on the regulations revision Web site, **http://www.doe.virginia.gov/VDOE/dueproc/regulationsCWD.html**, and as required by the Virginia Department of Education. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus ongoing expenditures	There will be ongoing administrative costs associated with the changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* which will be borne by the Virginia Department of Education, and local educational agencies. However, existing allocations should be sufficient to fund the state's responsibilities.
Projected cost of the regulation on localities	It is anticipated that the additional costs associated with the implementation of the proposed revisions will be minimal.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Those affected by the proposed regulations will include the Virginia Department of Education, school divisions, state-operated programs, and families of children with disabilities.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity,	The Virginia Department of Education, 132 school divisions, 17 state-operated programs, 26 detention homes, and 172,704 students with disabilities and their families. The proposed regulations do not

including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	affect small businesses.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	Estimates of the cost of the proposed regulations will vary based on the size of the local educational agency, and the methods which are used to ensure compliance with the new requirements. However, the additional costs created by the proposed changes should be minimal. The proposed regulations do not affect small businesses.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

To continue to be eligible for federal special education funding, Virginia's state regulations regarding special education must be amended to align with federal statutory and regulatory mandates. No other viable alternative exists. However, in accordance with 34 C.F.R. § 300.199, efforts have been made to minimize the number of rules, regulations, and policies to which the local educational agencies are subject. Small businesses will not be affected.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

During the development of the proposed regulations, VDOE has made efforts to minimize the number of rules, regulations, and policies to which the local educational agencies are subject, while still ensuring compliance with the IDEA 2004, its federal implementing regulations, and other laws and regulations that impact the provision of special education to students with disabilities in Virginia.

Small businesses will not be impacted by these regulations.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

See Attachment #2.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* are not anticipated to have an impact on the institution of the family or on family stability. However, parental involvement continues to be a fundamental component of the special education process.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Note: The current regulations are proposed for repeal (8 VAC 20-80-10, et seq.) and new regulations (8 VAC 20-81-10, et seq.) are being promulgated.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10 Repealed	10 Definitions	Repealed	Definitions for the following terms have been added to comply with federal requirements, or to provide clarity: Act; Alternative assessment; Career and technical education; Cognitive disability; Collaboration; Core academic subjects; Co-teaching; Dangerous weapon; Destruction of information; Educational placement; Educational service agencies; Eligible student; Equipment; Excess costs; Federal core academic subjects; Highly qualified special education teacher; Homeless children; Individualized education program team; Intellectual disability; Limited English proficient; National Instructional Materials Access Center (NIMAC); National Instructional Materials Accessibility Standard (NIMAS); Personally identifiable; Scientifically-based research; Serious bodily injury; Services plan; Special Education Hearing Officer; Timely manner; Universal design;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			and Ward of the state. Definitions for the following terms were modified to comply with federal requirements, or to provide clarity: Age of eligibility; Alternate assessment; Assistive technology device; Change in placement; Change in placement for purposes of discipline; Child with a disability; Consent; Developmental delay; Education record; Hearing impairment; Home tutoring; Individualized education program; Initial placement; Interpreting services; Local educational agency (LEA); Orientation and mobility services; Orthopedic impairment; Other health impairment; Parent; Participating agency; Private school children with disabilities; Related services; School health services and school nurse services; Special education; Specific learning disability; Speech or language impairment; State-operated programs; Transition Services; Traumatic brain injury; and Vocational education. Definitions for the following terms were moved to this section from another section of the regulations: Controlled substance; Illegal drug; and Weapon. The following terms were deleted: Child study committee; Impartial Hearing Officer; Implementation plan; Interpreting personnel; Itinerant; Qualified personnel; and Severe disability.
30 Repealed	20 Functions of the Virginia Department of Education	Repealed	To comply with federal requirements, provisions were included or modified which outline the VDOE's responsibilities to do the following: • Ensure children with disabilities are included in all state-wide and division-wide assessments; • Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children; • Supervise educational programs; • Assist LEAs and participating state agencies to ensure state and federal requirements regarding "least restrictive environment" (LRE) are implemented; • Review and evaluate compliance of licensed private nonsectarian special education schools; • Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations; • Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia's objectives under the "No Child Left Behind Act" (NCLB), and address graduation and drop-out rates, including performance indicators to assess progress toward achieving these goals; • Establish and maintain qualifications to ensure that

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions); • Respond to complaints filed by parents regarding staff qualifications; • Ensure compliance with the requirements of the McKinney-Vento Act as it impacts the provision of special education and related services to children with disabilities; • Report and certify annually to the United States Department of Education the number of children with disabilities receiving special education and related services on a date between October 1 and December 1 of each year, rather than before February 1 each year; • Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in LEAs, and if so, that VDOE takes the steps required by federal mandates; • Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities; • Ensure a practical method is developed and implemented to examine data to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions for children with disabilities, and if so, that VDOE follows federal requirements; • Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities; • Ensure that parents of children with disabilities are not required to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services; and • Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations. In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system of personnel development was deleted. The due date for the SSEAC's annual report to the Board of Education was modified from July 1st of each year to October 1st. To minimize the provisions that exceed federal requirements, the requirement that procedures be established to disseminate information from research, demonstration programs, and projects regarding children with disabilities was deleted.
40	30	Repealed	The provisions outlining which LEA is responsible for the

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Repealed	Responsibilities of local school divisions and state-operated programs		provision of FAPE to a student were restructured to clarify existing areas of ambiguity. In addition, provisions were added to address emancipated minors, and residency disputes between LEAs, or between a parent and the LEA. A provision was also added indicating that children with disabilities are entitled to FAPE regardless of citizenship or immigration status.
45 Repealed	40 Special Education Staffing Requirements	Repealed	Provisions were added to require that special education teachers be "highly qualified," in accordance with the federal special education regulations. For clarity: • Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements; • A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and • The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent. To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child's IEP team, rather than a 5 ½ hour day. To provide clarity and as a result of recent case law, the provisions regarding the qualifications for educational interpreting services have been modified to provide some flexibility regarding the credentials that an educational interpreter must obtain. In addition, the provisions which previously permitted waiver of the qualifications have been limited.
50 Repealed	50 Child find	Repealed	To comply with federal requirements: • "Wards of the State" must now be included in each LEA's child find program; • Each LEA's responsibilities for child find activities relative to parentally-placed private school students were expanded; • Screenings for instructional purposes are not considered an evaluation; and • VDOE prohibits State and LEA personnel from requiring parents of children with disabilities to obtain a prescription

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services. However, LEA personnel may share classroom-based observations with the parents regarding a student's performance, or need to be evaluated. In accordance with the *Code of Virginia* and the Board of Education regulations, children must be screened for scoliosis. To minimize state regulations that exceed the federal requirements, the following requirements were modified: • Specific provisions which outlined how a LEA was required to conduct its annual public awareness campaign were replaced by a single provision which requires that each LEA have procedures to document its public awareness campaign; • The timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings, were removed and replaced by a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the *Code of Virginia* and other state regulations; and • The multiple requirements and timelines regarding Child Study Committees were removed, and replaced by a provision which requires LEAs to develop local procedures which meet specified requirements to review the records of, assess the provision of appropriate instruction to, and review the performance evidence for a child who has been referred. LEAs must also have procedures to process in a timely manner all referral requests for a child suspected of having a disability.
52 Repealed	60 Referral for initial evaluation	Repealed	To comply with federal requirements, the following provisions were added: • A referral for an initial evaluation may be made by the VDOE or any state agency; • Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments; • Exceptions to the 65 business day timeline for the completion of an evaluation; and • New parental consent provisions for initial evaluations, including the LEA's options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances,

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			parental consent is not required for the initial evaluation of a ward of the state. To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 day timeline to obtain additional data for any eligibility determination. To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified: • The multiple requirements and timelines regarding Child Study Committees were removed; and • The timeline for the completion of an evaluation is triggered by receipt of parent consent, not receipt of the referral for evaluation by the Director of Special Education or designee.
54 Repealed	70 Evaluation and Reevaluation	Repealed	To comply with federal requirements, the following provisions were added: • The team must review local or state assessments and classroom-based observations; • The team must determine what additional data is necessary to determine the child's educational needs, and present level of academic achievement and related developmental needs; • New requirements regarding the administration of an evaluation in the language and form most likely to yield accurate information; • A written copy of the evaluation report must be provided at no cost to the parent; • Assessments of a child with a disability, or who is suspected of having a disability, who transfers between LEAs in the same school year, must be coordinated by the LEAs to ensure prompt completion of the full evaluation; • A reevaluation must be completed if the LEA determines that the child's educational or related services needs warrant a reevaluation, and at least every three years, unless the parent and the LEA agree that an evaluation is unnecessary; • A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise; • The LEAs responsibilities regarding parental consent when administering an evaluation that is administered to all children, and when the parent of a child who is home-instructed, home-tutored, or parentally-placed in a private school refuses, or fails to respond to a request to provide consent to evaluate; and • Modifications were made to the requirements if additional data is not needed for an evaluation, including: ➢ A LEA must provide the parent with prior written notice

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			(PWN) of the right for a parent to request an evaluation to determine the child's educational needs; and ➢ A LEA is not required to gather additional information unless the parent requests the evaluation for the purpose of determining if the child continues to have a disability or to determine the child's educational needs. For clarity: • A provision was added, indicating that the parent may resolve a dispute regarding the LEA's refusal to do an evaluation, via mediation or due process procedures; • Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and • A provision was inserted, noting that a LEA is not required to evaluate a child with a disability who graduates with a standard or advanced diploma, but the parent must receive PWN of the change in placement. To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified: • Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with other provisions that outline federal requirements; • The provision allowing the group to conduct its review without a meeting was deleted; • The timeline for the completion of an evaluation is triggered by receipt of parent consent, not receipt of the referral for evaluation by the Director of Special Education or designee; and • The requirement that a triennial evaluation be initiated no less than 65 business days prior to the third anniversary of the last date of eligibility was removed. To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 day timeline to obtain additional data for any eligibility determination.
56 Repealed	80 Eligibility	Repealed	The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section. They are included in 8 VAC 20-81-70. To comply with federal requirements, the following provisions were added: • In addition to determining whether or not a child is eligible for special education and related services, the eligibility

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			group must determine the educational needs of the child; • A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in math or reading, including the essential components of reading instruction; • The requirements for determining a child eligible as a child with a specific learning disability; and • Parental consent must be obtained before personally identifiable information is released for children who are parentally placed in a private school outside their LEA of residence. The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations: • Required eligibility group considerations; • Requirements for documenting the eligibility group's determination of eligibility; • New required members of the eligibility group; and • Requirements that the eligibility group include at least one member who is trained in observation, outlining the LEA's obligation to observe a child as part of the eligibility process. New provisions outline the qualifications of the eligibility group members. For clarity: • A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group; • New eligibility criteria were added for the following disabilities: Autism, deafness, developmental delay, hearing impairment, mental retardation, other health impairment, speech or language impairment, and visual impairment; and • The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120. To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.
58 Repealed	90 Termination of special education and related services	Repealed	To comply with federal requirements, each LEA must complete a summary of academic achievement and functional performance when a child with a disability graduates with a standard or advanced diploma or reaches the age of 22.

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			For clarity, provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting. To minimize state regulations that exceed the federal requirements, parental consent is not required prior to the termination of special education and related services. For clarity, a provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services.
60 Repealed	100 Free appropriate public education	Repealed	To comply with federal requirements, the following provisions were added: • FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential; • VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015; • LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C; • Provisions outlining each LEA's responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and • Provisions outlining VDOE's responsibilities regarding the methods and payments for ensuring children with disabilities are provided with FAPE. To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each LEAs responsibilities regarding the provision of personal devices, the length of the commute of a child with a disability, extended school year services, and disability harassment. To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities. For clarity, FAPE must be provided to children with disabilities who meet the age of eligibility requirements in 8 VAC 20-81-10, and to children with disabilities who reside within the school division but do not hold a valid U.S. citizenship or student visa.

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62 Repealed	110 Individualized education program	Repealed	To comply with federal requirements, the following provisions were added: • The LEA's responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings; • The LEA's option to permit a child's IEP to be amended without convening an IEP meeting, if the parent and the LEA agree, including that the IEP team members must be informed of any modifications, the meeting does not substitute for the annual IEP review, and upon request of the parent, the LEA must provide a revised copy of the IEP with the amendments incorporated; • The IEP team must include not less than one regular education teacher of the child, and not less than one special education teacher of the child, rather than "at least one" of each; • The provision previously outlined in 8 VAC 20-80-62 C. 2. c., was replaced with a provision outlining the LEA's obligation to obtain parental consent, or the consent of a child who has reached the age of majority, and to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services; • A LEA must, at the request of the parent, invite the Part C coordinator or other representative of the Part C system to attend the initial IEP meeting to assist with the smooth transition of services, and the notice of the initial IEP meeting must inform the parent(s) of this right; • If the LEA complies with certain requirements, a required member of the IEP team may be excused from attending the IEP meeting, in whole or in part; • The distinction between the secondary transition services provided to children with disabilities at age 14, and at age 16 have been deleted, including the distinction in the IEP meeting notice requirements; • During the development, review, and revision of a child's IEP, the team must consider the academic, developmental, and functional needs of the child; however, the requirement that the results of the child's performance on any general state or division wide assessment program be considered was deleted; • Nothing requires the inclusion of information into a child's IEP beyond what is specifically required; • The content of a child's IEP must include, in part, the following: A statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of any individual accommodations or modifications that are necessary to measure the child's

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			academic and functional performance on a state and division-wide assessment; a statement of how the child's progress toward the annual goals will be measured and when the periodic reports on the progress the child is making will be provided; and required information regarding secondary transition, including appropriate measurable postsecondary goals based on age-appropriate transition assessments, and transition services, including courses of study, which are based on the child's needs, and consider the child's preferences and interests; • Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and • In the development of an IEP for a preschool-aged child with a disability, the IEP team must consider an IFSP that contains the IFSP content contained in Part C, and may incorporate those components in the child's IEP. For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination, also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary. The provision previously at 8 VAC 20-80-62 B. 5. was deleted given the insertion of the above provision. To ensure the provision of FAPE to a child with a disability: • An IEP must be implemented as soon as possible following receipt of parental consent, not to exceed 30 calendar days, unless the LEA documents the reasons for the delay; and • Transition services must be initiated for a student with a disability prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, and the IEP must include, if appropriate, a statement of interagency responsibilities or any needed linkages. In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members. For clarity, the following provisions were added: • If a parent asks for revisions to the IEP, and if the LEA considers the request unreasonable, the LEA must advise the parent in writing of the reasons for the denial, and provide the parent with dispute resolution options; • If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs; • The provisions regarding allowing a parent to audiotape or videotape a meeting were modified, distinguishing between the parent's right to audiotape an IEP meeting, and the

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			LEA's option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at IEP meetings, or audio or video recording devices at meetings other than IEP meetings; • The timeline for providing the parent with a copy of the child's IEP is no later than 10 calendar days following the IEP meeting; • An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally; • For a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion; and • The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes. The following provisions were deleted: • Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child's caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a "parent;" and • Former provision 8 VAC 20-80-62 F. 5. f., as it is no longer applicable.
	120 Transfer students		For clarity, these provisions, which were previously included as part of 8 VAC 20-80-56, have been moved to their own section. This section, which has traditionally been Virginia-specific, has been modified to include the following new federal requirements regarding the transfer of students between LEAs in Virginia, and to an LEA in Virginia from another state: • The new LEA must take reasonable steps to obtain the child's records from the previous LEA in which the child was enrolled, and the previous LEA must take reasonable steps to respond to the request from the new LEA; and • The new LEA must provide FAPE to the child in consultation with the parents(s), including services comparable to those described in the child's IEP from the previous LEA until the new LEA either adopts the child's current IEP, or conducts an evaluation, if necessary, and develops and implements a new IEP. For clarity, all of the Virginia-specific requirements were modified, and now include the following: • If an LEA is not forthcoming in the provision of a child's educational records, VDOE may be contacted for assistance; • If the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education

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			setting, pending an evaluation, if an evaluation is necessary; • The LEA may develop and implement an interim IEP while obtaining and reviewing the information needed to develop a new IEP; • If the parent does not consent to a new or interim IEP, or if the LEA determines that an evaluation is necessary, the LEA must provide FAPE to the child in consultation with the parents(s) including services comparable to those described in the child's IEP from the previous LEA, and dispute resolution options may be initiated, if necessary; • If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and • To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA's responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition period during which the former CSA team is responsible for funding services, and the new LEA must review and revise, if necessary, and implement a new IEP.
64 Repealed	130 Least restrictive environment and placements	Repealed	To comply with federal requirements: • Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities; • LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child's IEP team to participate in nonacademic settings; and • Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities. Deleted the listing of alternative placements previously listed in 8 VAC 20-80-64 B. 2. a., and included a reference to 8 VAC 20-81-10's definition of the term "special education," where the alternative placements are listed. Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include "integrated service delivery."
65 Repealed	140 Placement of children at the Virginia schools	Repealed	To increase flexibility for school divisions and the Virginia schools, deleted the requirement that school divisions and the Virginia schools develop contractual agreements to ensure compliance with the federal and state special education requirements. However, retained the provisions

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			that outline responsibility for the transportation of students with a disability to and from the Virginia schools.
66 Repealed	150 Private School Placement	Repealed	To comply with federal requirements, the previous reference to "residential placement" in 8 VAC 20-80-66 A. 1., was modified to reference "a private school or facility." The federal language modified each LEA's responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, LEA's are responsible for those children who are parentally-placed in private schools, which are physically located within the LEA. Additional federal changes to each LEA's responsibilities regarding parentally-placed private school children with disabilities include the following: • An expansion of the LEA's child find responsibilities, including ensuring that comparable activities to those for public school students are undertaken, that LEA staff meet with representatives of private schools to determine how to conduct a thorough and complete child find process, and that the child find process ensure the equitable participation of parentally-placed private school children, and an accurate count of that population of students; • If a LEA has not expended all of its proportionate share amount for equitable services by the end of the fiscal year for which Congress appropriates the funds, the LEA must carry the funds over for an additional year; • LEAs may supplement, but not supplant, the proportionate share amount of federal funds for the provision of equitable services; • In calculating the proportionate share amount, LEAs must engage in timely and meaningful consultation with private school representatives prior to completing child find responsibilities to determine the number of parentally-placed private school children attending private schools within the LEA; • The child count must be conducted by December 1st each year; • There has been an expansion of the requirements regarding the LEA's responsibility to consult with private school representatives to include five different elements, including how, where, and by whom special education and related services will be provided for parentally-placed private school students, and the types of services to be provided. If the LEA disagrees with the private school representatives regarding the provision of services or the types of services, the LEA must provide them with a written explanation of the LEA's reasoning;

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			• Following consultation, the LEA must obtain a written affirmation from the private school representatives; • Under certain circumstances, private school representatives may file a complaint to VDOE against the LEA, and if the complainant is dissatisfied with VDOE's decision, the decision may be appealed to the U.S. Department of Education; • The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public school, except that the requirements regarding highly qualified special education teachers do not apply; • Services may be provided by LEA employees, or through contract with the LEA; • Special education and related services provided to parentally placed private school children with disabilities, must be secular, neutral, and nonideological; • The dispute resolution options available to parentally placed private school children apply to the LEA where the private school is located; and • Each LEA must maintain for its records, and provide to VDOE, certain data regarding parentally-placed private school children. For clarity, and to comply with federal requirements, the federal definition of the terms "elementary school" and "secondary school" were added. A new definition of the term "private school," was also included, outlining applicable federal and state requirements.
68 Repealed	160 Discipline procedures	Repealed	The section was revised to comply with federal requirements, including the addition or modification of the following provisions: • School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct; • A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year; • A child with a disability may be removed from their current educational placement to another setting for disciplinary reasons to the extent that the alternatives are applied to children without disabilities; • The LEA's responsibilities for providing services to a child with a disability during a short-term removal, including the LEA's responsibilities to ensure that beginning on the 11th day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, and be

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			included in VDOE and division wide assessment programs; • The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child's behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis; • Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child's disability. Special circumstances now include if the child inflicts serious bodily injury while at school or at a school function; • The LEA's responsibilities for providing services to a child with a disability during a long-term removal, including the LEA's responsibilities to ensure that the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, be included in VDOE and division wide assessment programs, and receives, as appropriate, a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) to address the behavior violation so that it does not recur; • Deleted the requirement that the LEA automatically conduct a FBA and the IEP team meet to develop a BIP, if it has not already done so, no later than 10 business days after first removing a student for more than 10 school days in a school year, or commencing a long-term removal. Rather, a BIP must be developed, at a minimum when a student's behavior interferes with his learning or that of others, or if the IEP team determines that the child's behavior is a manifestation of his disability and a FBA or BIP have not already been completed; • Deleted the provisions, which previously appeared in 8 VAC 20-80-68 C. 4. b., regarding determining that maintaining a child with a disability in the current placement is substantially likely to result in injury to the student or others, except that if an LEA believes that maintaining the student in the current educational placement is likely to result in injury to the child or others, the LEA may request a due process hearing, and a Special Education Hearing Officer may order a change in placement to an IAES for not more than 45 school days; • A manifestation determination decision must be made by the LEA, the parent(s), and the relevant members of the IEP team, rather than by "the IEP team and other qualified personnel;" therefore, the definition of "other qualified personnel" was also deleted; • The provisions, which previously appeared at 8 VAC 20-80-

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			68 C. 5. (2), were replaced with the new federal requirements for determining whether or not a child's behavior is a manifestation of his disability, including the LEA's responsibilities if the child's behavior is or is not a manifestation of his disability; • Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.; • Added provisions regarding the applicable timelines for an expedited due process hearing, including 20 school days to complete a hearing from the date the request for the hearing is filed, 10 school days following the hearing to issue a determination, and 7 calendar days to convene a resolution session, unless waived; • A Special Education Hearing Officer may return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of the federal requirements or the child's behavior was not a manifestation of the child's disability; • The provisions which previously outlined a child's placement during an appeal, and which included a child's right to "stay put" in the current educational placement during an appeal were deleted. Instead, a child with a disability must remain in the IAES pending the decision of the Special Education Hearing Officer or until the expiration of the time for the disciplinary placement; • Deleted the provision which previously permitted the "behavior or performance of the student" to trigger protections for a student not yet eligible for special education and related services; • A LEA must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred, a teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA; • A LEA is not deemed to have knowledge that a child is a child with a disability if the parent has not allowed a previous evaluation of the child, has refused services for the child, or the child has been evaluated and determined ineligible; • Previous provisions from 8 VAC 20-80-68 C. 9. were deleted; and • The LEA is required to include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child, transmit the statement to the VDOE upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students, and include the statement in the child's educational records, and with the child's IEP, when the

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			child transfers from one school to another. Provisions which outline the content of the statement were also added. For clarity, the definitions of the following terms were included in 8 VAC 20-81-10: Weapon, Controlled substance, Illegal drug, and Serious bodily injury.
70 Repealed	170 Procedural safeguards	Repealed	To comply with federal requirements: • In the case of a child with a disability who is transitioning from Part C to Part B services, the parent must be informed that an invitation to the initial IEP meeting must, at the parent's request, be sent to the Part C service coordinator or other representative to assist with a smooth transition; • To ensure parent involvement in placement decisions, parents must be provided with meeting notice meeting all requirements outlined in 8 VAC 20-81-110 E.; • The LEA must take whatever action is necessary to ensure that the parent understands and is able to participate in group discussions regarding the child's educational placement; • A child's placement in an IAES placement is an exception to the requirement that IEP teams determine a child's placement; • A parent is entitled to only one independent education evaluation (IEE) at public expense each time the LEA conducts an evaluation component with which the parent disagrees; • If a parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the evaluation results must be considered by the LEA, if it meets LEA criteria, in decisions regarding FAPE, and it may be presented by either party in a due process hearing; • If a Special Education Hearing Officer requests an IEE as part of a due process hearing, it must be at public expense; • The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted; • The events which trigger the requirement to provide a copy of the procedural safeguards document (PSD) were modified, and it was indicated that posting of a LEA's PSD on its Web site does not satisfy the requirement to provide the PSD, as required; • The required content of the PSD was modified; • The parental consent provisions were modified, including the following: ➢ Consent is required prior to accessing a child's public benefits or insurance; ➢ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services; ➢ Consent is not required prior to administering a screening to determine appropriate instructional strategies;

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			➢ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state; ➢ Consent is not required prior to providing FAPE to children with disabilities who transfer to LEAs in Virginia from another state; ➢ A LEA may, but is not required to, use mediation or due process if the parent fails to respond to a request for consent for an initial evaluation, or to override a parent's refusal to consent for an initial evaluation or reevaluation; ➢ If a parent refuses consent, or fails to respond to a request for consent, for the initial provision of special education and related services, the LEA may not use mediation or due process to obtain consent. However, the LEA's failure to provide the special education and related services is not considered a denial of FAPE, and the LEA is not required to convene an IEP meeting or develop an IEP; ➢ If a parent of a parentally-placed private school child refuses consent for an initial evaluation or reevaluation, the LEA may not use mediation or due process to secure consent; however, the child will not be considered eligible for equitable services; ➢ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and ➢ The LEA must make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. • LEAs using private insurance or public insurance and benefits to pay for services required for the provision of FAPE must provide the parent with notice and obtain parental consent as outlined in 8 VAC 20-81-300; • An LEA must comply with a parent's request to inspect and review their child's educational records before a resolution session is convened in accordance with 8 VAC 20-81-210; • Modifications were made to the provisions outlining when parental consent is required prior to the disclosure of personally identifiable information, including that consent is required before personally identifiable information is shared between the LEA where a student resides and a LEA where the student is parentally-placed in a private school; and • If a LEA makes the option available, parents of a child with a disability may elect to receive PWN, the PSD, and notice of a request for due process by electronic mail. In accordance with guidance from the U.S. Department of Education and the provisions of the *Code of Virginia*, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of

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			an original signature. A definition of electronic signature is included. Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300. To minimize state regulations that exceed the federal requirements, parental consent is no longer required for the partial or complete termination of special education and related services.
72 Repealed	180 Transfer of rights to students who reach the age of majority	Repealed	To comply with modifications to the Virginia *Code*, previous provision 8 VAC 20-80-72 C. 4. was revised to indicate that an adult student will not be considered competent if admitted to a facility for the training, treatment, and habilitation of persons with mental retardation, and to delete the section of that provision which stated that an adult student will not be considered competent if in a coma and eligible for admission to a state hospital.
74 Repealed	190 Mediation	Repealed	To comply with federal requirements: • Mediation is available to resolve specified issues at any time a joint resolution is made to VDOE by the LEA and the parent, including matters arising prior to the filing of a state complaint or request for due process; • VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation. • Qualified mediators must be trained in effective mediation techniques; and • If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements. To assist in complying with federal requirements, the following provisions were added: • Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and • Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.
76 Repealed	210 Due process hearing	Repealed	To comply with federal requirements, numerous provisions were added, including the following: • Timelines for filing a request for a due process hearing; • The LEA's authority to use due process to obtain parental consent; • The LEA's authority to request an expedited due process

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			hearing; • Sufficiency of a due process notice, including the procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied; • A copy of the PSD must be provided by a LEA upon receipt of the parent's first request for a due process hearing in a school year; • The qualifications of the Special Education Hearing Officer; • The LEA's responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C; • An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing; • A Special Education Hearing Officer's decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met; • The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements; • Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved; and • The timelines for appealing a due process decision to state or federal court. In compliance with the *Code of Virginia*, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation. To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted. To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited. To minimize the state regulations that exceed the federal requirements: • Numerous provisions were modified or deleted as responsibility for the implementation of the due process hearing system was shifted exclusively to VDOE, rather than the responsibility being shared, in part, with the Supreme Court of Virginia. To ensure compliance with

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			federal due process requirements, while maintaining an effective and efficient due process system, VDOE's responsibilities include the following regarding Special Education Hearing Officers, including the establishment of procedures: recruitment, selection, and appointment; training; evaluation and determinations regarding continued eligibility to serve as a Special Education Hearing Officer; and the analysis and correction, if necessary, of Special Education Hearing Officer decisions; • The provisions, which previously appeared at I.3.-I.5. were deleted; • A Special Education Hearing Officer may not require parties to submit briefs as a condition of rendering a decision, but the Special Education Hearing Officer may permit such a submission on the parties' request; and • LEAs are no longer required to develop and submit an implementation plan following the rendering of a due process decision or the withdrawal of a hearing request. To ensure the effective and efficient operation of the due process system, the following provisions were added or modified: • The minimum qualifications to serve as a Special Education Hearing Officer, and the criteria for disqualification as a Special Education Hearing Officer; • To initiate a due process hearing, the LEA must advise the parent(s) and VDOE; • If a request for a due process hearing is received solely by VDOE, VDOE will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required; • Requirements for the duration of the Special Education Hearing Officer's authority were added; • All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied; • VDOE must ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that the area(s) have been corrected; • A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE; • The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer's

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			responsibility to determine the scope of the conference, to document, if applicable, the reasons for not conducting a pre-hearing conference, and the pre-hearing determinations; • The required elements of a due process decision were modified; • A Special Education Hearing Officer must issue a ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE; and • The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions.
78 Repealed	200 Complaint resolution procedures	Repealed	To comply with federal requirements, the following provisions were added: • New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known; • A complaint must address an action that occurred not more than one year prior to the date the complaint is received, and can no longer include complaint allegations for a longer period of time, even if the violation is continuing; • The complaint must be simultaneously filed with VDOE and the LEA; • VDOE's complaint notification to the LEA must include notice that the LEA has the opportunity to propose a resolution, and the parties have the opportunity to engage voluntarily in mediation; • VDOE must conduct an investigation which includes a complete review of all relevant documentation; and • The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation. To ensure compliance with the new federal requirements regarding sufficiency of the complaint, a provision was added outlining VDOE's procedure if a complaint is insufficient. The requirement that VDOE send written notification of its receipt of a complaint to "other appropriate [VDOE] personnel" was deleted. For clarity, the following provisions were added: • The LEA's responsibility to respond after receiving notification of a complaint was added; • VDOE's procedure if a complaint is filed by an individual other than the child's parent(s) or their legal counsel; and • VDOE will notify the parties in writing if the timeline for the complaint is extended. For clarity, current provisions 8 VAC 20-80-78 D. through G. were reordered to mirror the complaint process, and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			provision 8 VAC 20-80-78 F. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education. Given other modifications in the section, the language previously located in 8 VAC 20-80-78 C.3.a. and C.3.b. was deleted.
80 Repealed	220 Surrogate parent procedures	Repealed	To comply with federal requirements, the following provisions were added: • A LEA must appoint a surrogate parent for a child who is a ward of the state, or who is an unaccompanied homeless youth; • Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state; • A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary; • A surrogate parent may not be an employee of a LEA; and • A temporary surrogate, who is a staff member of an emergency shelter, transition shelter, independent living program, or street outreach program, may be appointed to an unaccompanied homeless youth, even though the surrogate is employed by an agency involved in the education or care of the child, if the surrogate otherwise meets the qualifications to be a surrogate parent. To minimize state regulations that exceed the federal requirements: • LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed; • The language previously in 8 VAC 20-80-80 B. 6. b., which referenced the surrogate parent's consent to the termination of services was deleted; • The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and • The training requirements previously outlined in 8 VAC 20-80-80 D. 1. b. have been modified to indicate that a surrogate parent must have knowledge and skills to ensure adequate representation of the child. Surrogate parents are no longer required to complete a LEA approved training session prior to representing the child or to attend annual training thereafter.
90 Repealed	230 Local educational agency administration	Repealed	To comply with federal requirements, provisions were added which indicate: • A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	and governance		• A timeline for the LEA's participation in a transition planning conference for a student transitioning from Part C to Part B; • New LEA responsibilities regarding migratory children and early intervening services; and • The LEA's responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA's option to coordinate with the NIMAC. The requirements regarding the LEA's submission of an annual plan were revised to clarify the LEA's responsibility. Also, in accordance with federal modifications, LEAs are no longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development. The requirements regarding the local advisory committee (LAC) were modified: • To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities, and include representation of gender and the ethnic population of the local school division; • To delete the requirement that LEA personnel may only serve as consultants; and • To clarify the role of the LAC, including in the review of the school division's annual plan. For clarification, a provision was inserted which outlines a LEA's responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30th.
100 Repealed	240 Eligibility for funding	Repealed	In compliance with federal requirements, LEAs are no longer required to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.
110 Repealed	250 State funds for local school divisions	Repealed	To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment. To ensure compliance with the *Code of Virginia*, provisions were expanded that outline VDOE's obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children's home.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education. The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Virginia Board of Education with greater flexibility.
120 Repealed	260 Federal funds	Repealed	To comply with federal requirements: • Provisions were added which outline the LEA's responsibilities regarding the following: Excess costs; Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities; • Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and • The language, which previously permitted the awarding of "sliver grants," was deleted.
130 Repealed	270 Funds to assist state-operated programs	Repealed	For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.
140 Repealed	280 Funding, withholding, and recovery of funds	Repealed	To comply with the *Code of Virginia*, a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA's state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related services to such children. To comply with federal requirements, if a LEA is notified in writing by VDOE of a decision to withhold funds, the LEA must provide public notice to its jurisdiction regarding the pendency of the action. For clarity, provision 8 VAC 20-80-140 C. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.
150 Repealed	290 Appeal of administrative	Repealed	To comply with federal requirements, a LEA must appeal within 20 days of a decision made during an administrative hearing for VDOE to withhold its funding.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	decision regarding funding		To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.
152 Repealed	300 Use of public and private insurance	Repealed	To comply with federal requirements, the section was modified to indicate that like with private insurance, if a LEA is seeking to access a child's public benefits or insurance to provide the child with services required for FAPE, the LEA must obtain informed parental consent each time that access to the child's public benefits or insurance is sought, and provide the parent with notice containing specific elements, including that the parent's refusal to allow access does not relieve the LEA of its responsibility to provide FAPE to the child at no cost.
155 Repealed	310 Attorneys' fees	Repealed	To comply with federal requirements, provisions were added which outline who may be awarded reasonable attorneys' fees, and that attorneys' fees may not be awarded relative to a resolution session.
160 Repealed	320 Additional responsibilities for programs with children with disabilities in residence or custody	Repealed	To comply with federal requirements, the requirement for state-operated programs to develop a comprehensive system of personnel development was deleted, and requirements to ensure that personnel are appropriately and adequately prepared and trained, including requirements for paraprofessionals, were added.
190 Repealed	330 Compliance with § 504 of the Rehabilitation Act of 1973, as amended	Repealed	To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints. For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.

Town Hall Form – Attachment #1

Proposed Regulation Agency Background Document

Comparison of Virginia Regulations and IDEA 2004
Listing of Virginia-Specific Regulations Exceeding Federal Regulations

Table of acronyms:

VAC: Virginia Administrative Code
COV: Code of Virginia
SOQ: Virginia's Standards of Quality
SOA: Virginia's Standards of Accreditation
CSA: Virginia's Comprehensive Services Act
VDHH: Virginia Department of the Deaf and Hard-of-Hearing Regulations
FERPA: Family Education Rights and Privacy Act

8 VAC 20-81-10 Definitions

Provision	Source of Requirement	Discussion
Age of eligibility	COV Prior Virginia Regulations	Long-standing Virginia requirement. Incorporated the COV, § 22.1-213. Specifies services to begin at age 2; initial language in COV in 1972 and subsequent Virginia Regulations. Age 2 is further defined as 2 by September 30 of a given year.
Age of majority	COV New in 2001-02 Virginia Regulations	Created definition to specify the age of majority. Incorporated the COV, § 1-204. Specifies age 18 as the age of majority. The IDEA 1999 federal regulations reference age of majority.
Alternate assessment	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the federal requirements.
Alternative assessment	New in 2007	Created definition to assist in the implementation of the federal requirements allowing states to create alternative assessments.

Audiology	COV New in 2001-02 Virginia Regulations	Created definition to incorporate the COV, § 54.1-2600. Included provision that the services are to be provided by an audiologist licensed by the Board of Audiology and Speech-Language Pathology.
Behavioral intervention plan	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Calendar day	New in 1994 Virginia Regulations	Expanded federal definition to assist in the implementation of the federal requirements.
Career and Technical Education	New in 2007	Included definition from the Carl Perkins Act to ensure that special education needs are reflected and that these options are available to students with disabilities.
Caseload	SOQ New in 2001-02 Virginia Regulations	Created definition based on SOQ formula.
Change in identification	New in 1994 Virginia Regulations	Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Change in placement	New in 1994 Virginia Regulations	Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Chapter	New in 2001-2002 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition to ensure clarity.
Charter schools	COV New in 2001-02 Virginia Regulations	Carried over definition from former state regulations. Tailored IDEA federal 2006 regulations term to the COV to provide clearer meaning in accordance with Virginia's implementation of the COV requirements. §§ 22.1-212.5; 22.1-212.15
Child	New in 2001-2002 Virginia Regulations	Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Cognitive disability	New in 2007	Added the term to address alternative to the use of mental retardation.
Collaboration	New in 2007	Included definition to assist in the implementation of least restrictive environment for caseload and teacher assignment responsibilities.

Complaint	New in 2001-02 Virginia Regulations	Created definition to clarify the difference between complaint under the complaints resolution procedures and “complaint” in due process hearings.
Comprehensive Services Act	COV New in 2001-02 Virginia Regulations	Created definition to incorporate COV requirements regarding CSA, the source of funding for private special education placements. § 2.2-5200 et seq.
Correctional facility	COV New in 2001-02 Virginia Regulations	Tailored IDEA federal 1999 language to COV language. §16.1-228; § 53.1-1 Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Co-teaching	New in 2007	Included definition to assist in the implementation of least restrictive environment for caseload and teacher assignment responsibilities.
Counseling services	VA Teacher Licensure Regulations Prior Virginia Regulations	Clarified that visiting teacher may provide service. Reflected Virginia’s recognition of visiting teachers.
Developmental Delay	Prior Virginia Regulations	Established definition and age range. IDEA federal 1999 regulations directed SEA to establish definition. Virginia first used DD in 1990. Proposed regulations lowered age range to include only students from 2 – 5 years.
Due process hearing	New in 2001-02 Virginia Regulations	Created definition to clarify difference between due process and complaints systems as dispute resolution options.
Eligible student	New in 2007	Created definition to clarify that students who have reached the age of majority have rights transferred to them.
Federal Core Academic Subjects	New in 2007	The term is used to reflect the requirements in No Child Left Behind.
Federal financial assistance	New in 1990 regulations	Created definition to incorporate and clarify federal terminology. 34 CFR § 104.3(h)
Functional behavioral assessment	New in 2001-02 Virginia Regulations	Created definition to assist in implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.

General curriculum	New in 2001-02 Virginia Regulations	Created definition to clarify meaning of term in Virginia.
Home-based instruction	SOQ New in 2001-02 Virginia Regulations	Created definition to reflect SOQ funding and tailor IDEA federal regulations terminology to Virginia.
Homebound instruction	SOA Prior Virginia Regulations	Incorporated SOA language.
Home instruction	COV New in 2001-02 Virginia Regulations	Created definition to incorporate and clarify federal 1999 regulations terminology and COV terminology. § 22.1-254.1 Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Home tutoring	COV New in 2001-02 Virginia Regulations	Created definition to incorporate and clarify IDEA federal 1999 regulations terminology and COV terminology. § 22.1-254 Carried over definition from former state regulations, with modifications, to assist in the implementation of the federal requirements.
Individualized family service plan	Part C/IDEA New in 2001-02 Virginia Regulations	Created definition to incorporate and clarify language from Part C.
Infant and toddler with a disability	Part C/IDEA COV New in 2001-02 Virginia Regulations	Modified federal definition to incorporate language from Part C and COV to clarify the term. § 22.1-213
Initial placement	Prior Virginia Regulations	Carried over definition from previous regulations to clarify the term as used in the IDEA federal 1999 regulations.
Intellectual disability	New in 2007	Added the term to address alternative to the use of mental retardation.
Interpreting services	New in 2007	Added to clarify the services provided by interpreters
Level 1 and Level II services	SOQ New in 2001-02 Virginia Regulations	Created definition to reflect SOQ formula.

Manifestation determination review	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Medical services	COV New in 2001-02 Virginia Regulations	Created definition to incorporate COV. § 22.1-270. Added nurse practitioner to definition as a service provider.
Multiple disabilities	SOQ Prior Virginia Regulations	Incorporated language from the SOQ formula. Changed examples since some readers interpreted the examples as requiring mental retardation to be one of the disabilities, which is not an IDEA requirement.
Notice	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Occupational therapy	COV Board of Health Professions Regulations, New in 2001-02 Virginia Regulations	Included IDEA 1999 federal regulation language. Additionally, reflected licensure requirement for OT found in COV and the Board of Health Professions regulations. §§ 54.1-2956; 54.1-2400. Clarified that services may be provided under supervision of an OT.
Parent	COV Prior Virginia Regulations	Expanded federal definition to incorporate COV provisions regarding foster parents. §§ 16.1-283; 16.1-277.01; 16.1-277.02; 22.1-1; and 63.2-900
Physical therapy	COV Board of Health Professions Regulations Prior Virginia Regulations	Clarified that services may be provided under supervision of a PT. Reflected licensure requirements for PT found in COV and Board of Health Professions regulations. §§ 54.1-2400; 54.1-3475
Program	Prior Virginia Regulations	Used definition from previous state regulations to clarify the term.

Psychological services	COV Board of Health Professions Regulations Prior Virginia Regulations	Reflected licensure requirements for psychologist found in COV and Board of Health Professions regulations. § 54.1-2400. Clarified that services may be provided under supervision of a psychologist.
Public notice	Prior Virginia Regulations	Continued the use of the previous state regulations to clarify the term.
Qualified person with a disability	The Rehabilitation Act New in 2001-02 Virginia Regulations	Created definition from Section 504 of The Rehabilitation Act.
Screening	COV Prior Virginia Regulations	Long-standing Virginia requirement. Implemented COV. §§ 22.1-273; 22.1-270; 22.1-273.1. Established requirement to screen hearing and vision, charging VDOE with establishing grade levels. Screening requirements for new students established by special education regulations in 1980.
Section 504	The Rehabilitation Act Prior Virginia Regulations	Definition based on The Rehabilitation Act of 1973, as amended.
Social work services	VA Teacher Licensure Regulations Prior Virginia Regulations	Includes visiting teachers, a category specific to Virginia and consistent with Virginia's Teacher Licensure Regulations.
Special Education Hearing Officer	New in 2007	The term discriminates between those individuals conducting special education due process hearings and hearing officers who conduct hearings via the Supreme Court of Virginia. Also, this term more accurately describes the role of those conducting special education hearings.
State assessment program	New in 2001-02 Virginia Regulations	Created definition to identify what portion of the assessments in Virginia is the state assessment program under IDEA.
State educational agency	Prior Virginia Regulations	Specified that VDOE is the SEA.

State-operated program	COV Prior Virginia Regulations	Modified definition to incorporate COV language. §§ 22.1-7; 22.1-340; 22.1-345
Timely manner	New in 2007	Developed to further define when materials via the NIMAS must be provided to students.
Transition from Part C services	New in 2001-02 Virginia Regulations	Created definition to clarify difference between this term and secondary transition; definition based on IDEA federal Part C regulations.
Virginia Schools for the Deaf and the Blind	COV New in 2001-02 Virginia Regulations	Created definition to implement COV. § 22.1-346.

8 VAC 20-81-20 Functions of the Virginia Department of Education.

Provision	Source of Requirement	Discussion
Requirements of SEAs	Prior Virginia Regulations	Modified IDEA federal terminology to reflect Virginia terminology (e.g., VSDBs, state-operated programs).

8 VAC 20-81-30 Responsibilities of local school divisions and state-operated programs

The following provisions are required to implement the IDEA under General Supervision. However, additional clarification was included to assist with the implementation of the requirements.

Provision	Source of Requirement	Discussion
Residency for purposes of services when placed for educational and non-educational purposes	Revised in 2007	Clarified residency for purposes of identifying LEAs responsible for serving students with disabilities, including those students whose citizenship or immigration status may be unclear. Additional language will result in decreased delay in providing services to students placed for various purposes in different settings.

Education in jails	VA Appropriation Act New in 2001-02 Virginia Regulations	Identified responsibility for educating this population consistent with the Appropriation Act.
Children in foster care	COV CSA New in 2001-02 Virginia Regulations	Referenced COV and CSA funding requirements. § 22.1-101.1
Children in nursing homes	VA Dept. for Medical Assistance Services New in 2001-02 Virginia Regulations	Referenced 1995 Office for Civil Rights interpretation and Department of Medical Assistance Services terminology for facilities.
Children in group homes	New in 2001-02 Virginia Regulations	Applied 1995 OCR interpretation to children in group homes.
Students 18 with and w/o legal guardian	New in 2001-02 Virginia Regulations	Clarified responsibility for adult children with disabilities, consistent with Virginia requirements on legal guardianship.
Responsible division in the event there is a dispute about residency	New in 2001-02 Virginia Regulations	Ensured children continue to receive services.

8 VAC 20-81-40 Special education staffing requirements

Provision	Source of Requirement	Discussion
Staffing for school-aged and pre-school-aged children	SOQ VA Teacher Licensure Regulations Prior VA Special Education Program Standards	Long-standing Virginia requirement. Established standards for grouping students and assigning teachers. Teacher assignments standards first established in 1962 and incorporated into Teacher Licensure regulations and former Special Education Program Standards regulations.

Staffing for jails	New in 2001-02 Virginia Regulations	Clarified required teacher endorsements.
Educational interpreting services	VDHH Regulations New in 2001-02 Virginia Regulations; Revised in 2007	Defines qualifications for providing educational interpreting services.

8 VAC 20-81-50 Child find

Provision	Source of Requirement	Discussion
Public awareness	Prior Virginia Regulations	Long-standing Virginia requirement. Established standards relative to SEA's obligation to establish child find process. Requirements established in 1980.
Screening – hearing and vision (including timelines)	COV Prior Virginia Regulations	Long-standing Virginia requirement. COV established requirement to screen hearing and vision prior to 1950, charging VDOE with establishing grade levels. §§ 22.1-270; 22.1-273. Screening requirements for new students established in special education regulations in 1980.
Screening – speech-language, gross and fine motor (including timelines)	Prior Virginia Regulations	Long-standing Virginia requirement. Procedures established in 1980.
Screening for Scoliosis	COV – New in 2007	COV established requirement to screen for scoliosis. § 22.1-273.1
Confidentiality and parent notification	COV IDEA and FERPA regulations New in 2001-02 Virginia Regulations	Included COV notification and federal IDEA 2006 and FERPA confidentiality requirements. § 22.1-273

8 VAC 20-81-60 Referral for initial evaluation

Provision	Source of Requirement	Discussion
Referral requirements	Prior Virginia Regulations Revised in 2007	Long-standing Virginia requirement, since 1980.
Timeline for evaluation	Revised in 2007	Established parental consent as the initiation of the timeline for completing the evaluation.
Exceeding timeline	New in 2007	To increase flexibility for local school divisions and parents, tailored the IDEA federal 2006 regulations timeline exception regarding obtaining additional data to apply to all eligibility categories, rather than just specific learning disability.

8 VAC 20-81-70 Evaluation and Reevaluation

Provision	Source of Requirement	Discussion
Nonstandardized tests	New in 2001-02 Virginia Regulations	Established use of nonstandard tests (e.g., structured observations or sampling) with conditions; based on USDOE commentary on IDEA federal 1999 regulations.
Test the hearing of each child prior to placement	COV Prior Virginia Regulations	Implemented COV requirement that hearing be tested during evaluation for special education. § 22.1-214
Evaluation reports available to parents 2 business days before the eligibility meeting	New in 2001-02 Virginia Regulations	Board of Education decision based on parent comments to revisions of state special education regulations in 2001-02.
Timelines	Prior Virginia Regulations Revised in 2007	Long-standing Virginia requirement (since 1980) of 65-business day timeline from receipt of referral to complete evaluations and determine eligibility. Modified in 2007. Timeline is now triggered by parental consent. IDEA 2004 permits SEA to have an established timeline.

Exceed 65 day timeline	New in 2007	To increase flexibility for local school divisions and parents, tailored the IDEA federal 2006 regulations timeline exception regarding obtaining additional data to apply to all eligibility categories, rather than just specific learning disability.

8 VAC 20-81-80 Eligibility

Provision	Source of Requirement	Discussion
Eligibility group	Prior Virginia Regulations	Long-standing Virginia requirement. Virginia regulations established an eligibility team process in 1980. The function remains as an IDEA requirement.
Team work toward consensus in making decisions	New in 2001-02 Virginia Regulations	Implemented USDOE interpretation in 1999 federal regulations that voting is inappropriate and working toward consensus ensures parental rights of participation. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Forwarding information to the IEP team	Prior Virginia Regulations	Mirrored the SEA's responsibility under general supervision to establish process.
Reports by persons who do not agree with the team decision	Prior Virginia Regulations	Applied rights of students with specific learning disabilities to all students and parents.
Eligibility of 2-year olds	COV Prior Virginia Regulations	Long-standing Virginia requirement. Implemented the COV. § 22.1-213
Eligibility of child with developmental delay	Prior Virginia Regulations	IDEA federal 1999 regulations directed SEA to establish definition and age range; applied teacher licensure requirements. IDEA federal 2006 regulations permit SEA to establish a state definition.
Forward relevant information for instruction to the child's teachers if the child is not found eligible.	Prior Virginia Regulations	Reflected established practice to use diagnostic information to improve instruction. Reflected FERPA requirement regarding consent when sharing with private schools.

Additional requirements for LD eligibility applied to all disabilities	New in 2007	Applies requirements for all students found eligible to include group considerations; requirements for documenting the eligibility group's determination of eligibility; required members of the eligibility group; and requirement that the eligibility group include at least one member trained in observation and the LEA's responsibility to observe the child as a part of the evaluation process.
Determination of eligibility	New in 2007	A provision was added requiring that a determination regarding eligibility must be made on an individual basis by the eligibility group.
Eligibility criteria	New in 2007	Criteria for determination of eligibility were added for the following disabilities: autism, deafness, developmental delay, hearing impairment, mental retardation, other health impairment, speech or language impairment, and visual impairment.
IEP team meeting following eligibility meeting after a reevaluation	New in 2007	To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.

8 VAC 20-81-90 Termination of special education and related services

Provision	Source of Requirement	Discussion
Summary of academic achievement and functional performance	New in 2007	For clarity, provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.
Terminating related service	New in 2001-02 Virginia Regulations	Specified a necessary process that is absent in IDEA federal regulations; minimizes extra meeting requirements.

8 VAC 20-81-100 Free appropriate public education

Provision	Source of Requirement	Discussion
Graduation	SOA SOQ New in 2001-02 Virginia Regulations	Implemented SOA and SOQ. Tailored IDEA federal regulations to Virginia, to mean graduation with a standard or advanced studies diploma.
Provides FAPE exception for certain incarcerated students	New in 2001-02 Virginia Regulations	Implemented Virginia's decision to exclude students 18-21 who are incarcerated and not previously identified.
Provides transportation for students with disabilities	COV Prior Virginia Regulations	Reflected both IDEA federal regulations and COV requirements. §§ 22.1-221; 22.1-347 C.
Length of school day	Prior Virginia Regulations	Carried over definition to ensure that school-aged students with disabilities are provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise.
LEA responsibility for the provision of personal devices	New in 2007	To comply with guidance from the U.S. Department of Education.
LEA responsibility for the length of a commute for a child with a disability	New in 2007	To comply with guidance from the U.S. Department of Education.
LEA responsibility for the provision of extended school year services	New in 2007	To comply with guidance from the U.S. Department of Education and case law.
LEA responsibility for disability harassment	New in 2007	To comply with guidance from the U.S. Department of Education.

8 VAC 20-81-110 Individualized education program

Provision	Source of Requirement	Discussion
IEP timeline after reevaluation	New in 2007	For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary.
Implementation timeline	New in 2007	Added a 30 day timeline to the implementation of an IEP to clarify the federal language “as soon as possible”.
Transition Services Mandatory Age	New in 2007	Modified the age requirement for transition services to be addressed in an IEP from age 16 to age 14.
IEP team members	New in 2007	In accordance with guidance from the U.S. Department of Education, specifies that the LEA determines the school personnel to fill the roles of the required IEP team members.
Parent request for IEP revisions	New in 2007	To add clarity, added provision to indicate that if a parent asks for an IEP to be revised and if the LEA considers the request unreasonable, the LEA must advise the parent in writing of the reasons for the denial and provide dispute resolution options.
Costs for LEA actions to ensure parent participation	New in 2007	To add clarity, added provision to indicate that if an LEA uses alternative means of ensuring parent participation in meetings resulting in additional costs, the LEA is responsible for those costs.
Taping meetings	Revised in 2007	To add clarity, and consistent with guidance from the U.S. Department of Education, the provisions regarding audio and video taping IEP meetings distinguish between the parent’s right to audiotape an IEP meeting, and the LEA’s option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at IEP meetings, or audio or video recording devices at meetings other than IEP meetings.
IEP Copy Timeline	New in 2007	To add clarity, a timeline was included requiring that the LEA provide the parent with a copy of the IEP no later than 10 days after the meeting.

Benchmarks	New in 2007	To add clarity, and consistent with guidance from the U.S. Department of Education, a provision was added allowing the use of benchmarks or short-term objectives if the IEP team determines that they are required for a child with a disability to benefit educationally.
Modified Standard Diploma provision	New in 2007	To facilitate appropriate post-secondary outcomes, it was specified that for a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion.
Speech-language pathologist	New in 2001-02 Virginia Regulations	Specified that the special education teacher on IEP team for students whose only disability is speech-language impairment is the speech-language pathologist. Ensured that qualified providers would develop the child's IEP, in accordance with Appendix A of the IDEA federal 1999 regulations.
IEP Implementation	New in 2001-02 Virginia Regulations	Language indicating that each LEA must provide special education and related services to a child with a disability in accordance with the child's IEP was inserted to comply with the IDEA federal 1999 regulations. This provision was retained for clarity.
IEP teams work toward consensus	New in 2001-02 Virginia Regulations	Incorporated language from Appendix A of the IDEA federal 1999 regulations.
Modified standard diploma	SOA New in 2001-02 Virginia Regulations	Reflected the addition of the modified standard diploma option to the SOA requirements.
Children with disabilities in state, regional, or local adult or juvenile correctional facilities	New in 2001-02 Virginia Regulations; revised 2007	Added language that tailored IDEA federal regulations to Virginia's correctional facilities.

8 VAC 20-81-120 Children who transfer

Provision	Source of Requirement	Discussion
Failure of an LEA to provide educational records	Revised in 2007	Specifies that if an LEA is not forthcoming in the provision of a child's educational records, VDOE may be contacted for assistance.
Inability to obtain an IEP from the previous LEA	Revised in 2007	In accordance with U.S. DOE guidance, specifies that if the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting pending an evaluation, if an evaluation is necessary.
Interim IEP	Revised in 2007	Specifies that the LEA may develop an interim IEP while obtaining and reviewing the information needed to develop a new IEP.
Lack of parental consent	Revised in 2007	Specifies that if a parent does not consent to a new or interim IEP, or the LEA determines that an evaluation is necessary, the LEA must provide FAPE to a child in consultation with the parent(s) including services comparable to those described in the child's IEP from the previous LEA, and dispute resolution options may be initiated, if necessary.
Evaluation requirements	Revised in 2007	Specifies requirements, including notice, before initiating an evaluation.
Private residential school transfer	Revised in 2007 CSA	Specifies requirements when a child transfers from one LEA to another and is in a private residential school.

8 VAC 20-81-130 Least restrictive environment and placements

Provision	Source of Requirement	Discussion
Home-based and homebound services requirements	New in 2001-02 Virginia Regulations SOA	Distinguishes between home-based and homebound services.

8 VAC 20-81-140 Placement of children at the Virginia Schools for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton

Provision	Source of Requirement	Discussion
VSDBs	COV New in 2001-02 Virginia Regulations; Revised 2007	Clarifies roles and responsibilities of school divisions and the Virginia schools. Reflects how the Virginia schools are recognized in the COV. §§ 22.1-348; 22.1-347 c.

8 VAC 20-81-150 Private school placement

Provision	Source of Requirement	Discussion
Requirements of the CSA, the source of funding for LEA placements	COV CSA New in 2001-02 Virginia Regulations	Linked IDEA federal regulations with CSA requirements. Included language from the COV and CSA administrative requirements for funding. § 2.2-5200 et seq.
Interstate Compact for the Placement of Children	COV New in 2001-02 Virginia Regulations	Incorporated COV requirements. § 22.1-218.1
Children who are home-instructed or home-tutored	COV New in 2001-02 Virginia Regulations	Incorporated COV requirements to include home instructed and home tutored students with private school students placed by parents when FAPE is not at issue. § 22.1-254.1

8 VAC 20-81-160 Discipline procedures – Does not exceed federal regulations

8 VAC 20-81-170 Procedural safeguards

Provision	Source of Requirement	Discussion
Electronic signature	New in 2007 COV	In order to provide maximum flexibility regarding consent and other needs for signatures, in accordance with guidance from the U.S. Department of Education and the provisions of the *Code of Virginia*, if an electronic document contains an electronic signature, the electronic signature has the legal effect and

		enforceability of an original signature. COV § 59.1-479 et seq.
Parental consent required for change in identification & revisions to IEP	Prior Virginia Regulations	Long-standing Virginia requirement. Consent provisions established in 1980. Strong support throughout previous public comment periods historically for inclusion of these requirements.

8 VAC 20-81-180 Transfer of rights to students who reach the age of majority

Provision	Source of Requirement	Discussion
Transfer rights	COV New in 2001-02 Virginia Regulations	Incorporated COV and IDEA federal regulations; specified that rights transfer at age 18. § 1-204
Standard for determining a representative for the student	New in 2001-02 Virginia Regulations	Established standard. IDEA regulations allow states to provide a vehicle for an educational representative to be determined without going to court or using a power of attorney.

8 VAC 20-81-190 Mediation

Provision	Source of Requirement	Discussion
Confidentiality pledge	New in 2007	To ensure confidentiality, parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge.
Conflict of Interest	New in 2007	To prevent conflicts of interest between state mediators and school divisions, state mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.

8 VAC 20-81-200 Complaint procedures

In accordance with the IDEA federal 2006 regulations, at § 300.151, and the SEA's general supervision responsibility, VDOE has developed written procedures for resolving complaints.

8 VAC 20-81-210 Due process hearing

Provision	Source of Requirement	Discussion
Qualifications of Special Education Hearing Officers	Implementation of System	To ensure compliance with federal due process timelines and requirements, VDOE is provided the authority to identify the criteria for appointment and disqualification as a Special Education Hearing Officer.
Training of Special Education Hearing Officers	Implementation of System	To ensure compliance with federal due process timelines and requirements, VDOE is provided authority to require training for Special Education Hearing Officers regarding the management of the hearing and compliance with applicable regulations.
Evaluation of Special Education Hearing Officers	Implementation of System	To ensure compliance with federal due process timelines and requirements, VDOE is authorized to evaluate each Special Education Hearing Officer's management of the hearing and compliance with applicable regulations.
Objections to Appointment of Special Education Hearing Officer	Implementation of System	To ensure compliance with federal due process timelines, procedures for objections to the appointment of a hearing officer were expanded.
Timeline extensions	Implementation of System	To ensure compliance with federal due process timelines, instances in which an extension to the timeline can be granted are limited.
Procedures for requesting a due process hearing	Implementation of System	To ensure the effective and efficient operation of the due process system, procedures for requesting a due process hearing are detailed to ensure that all parties are contacted.
Authority of Special Education Hearing Officers	Implementation of System	To ensure the effective and efficient operation of the due process system, the requirements for the duration of the Special Education Hearing Officer's authority were added.
Pre hearing activities	Implementation of System	To ensure the effective and efficient operation of the due process system, requirements for disclosures, securing a transcription of the hearing, tasks to be completed within five days of appointment, and the conduct of the pre-hearing conference are detailed. Special Education Hearing Officers are given the responsibility for ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE.

Hearing requirements	Implementation of System	In compliance with the COV, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation. Additional requirements are included to address time and place of hearings to ensure that it is conducted at a time and location reasonably convenient to the parent(s) and the child involved. § 22.1-214 B.
Post hearing activities and requirements	Implementation of System	The required elements of a Special Education Hearing Officer's decision are detailed; VDOE is required to ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that any areas of noncompliance have been corrected.

8 VAC 20-81-220 Surrogate parent procedures

Provision	Source of Requirement	Discussion
Role of foster parent	New in 2001-02 Virginia Regulations	Established to implement the IDEA federal 1999 regulations option for recognizing foster parents and provide more local flexibility.
Surrogate parents appointment	COV New in 2001-02 Virginia Regulations	Incorporated the COV and IDEA federal 1999 regulations. § 16.1-283; 277.01-02
Procedures for identification and recruitment of surrogate parents	Prior Virginia Regulations	Established as part of the SEA's general supervision responsibility.
LEA procedures for the appointment of surrogate parents and the provision of their services	Prior Virginia Regulations	Established as part of the SEA's general supervision responsibility.

8 VAC 20-81-230 Local educational agency administration and governance

Provision	Source of Requirement	Discussion
Annual Plan Requirements	COV	Each LEA is required to submit a plan annually to the Board of Education. COV § 22.1-215 The plan is used as part of VDOE's general supervisory authority to ensure compliance with IDEA federal regulations.
Local Advisory Committee	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980.
Responsibilities of LAC	Prior Virginia Regulations	Long-standing Virginia requirements, since 1980. Includes participation in the review of the annual plan for special education.
Membership of LAC	Prior Virginia Regulations and New Requirement in 2007	Requires that a majority of the committee be parents of students with disabilities or individuals with disabilities; requires that membership reflect gender and ethnic representation of the school division.
Regional special education programs	VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirement. Regional programs first established in 1984 regulations.
Programs in jails	VA Appropriations Act New in 2001-02 Virginia Regulations	Established to meet IDEA requirements for this student population.
2 year olds	COV	For clarification, specifies that children who are two on or before September 30 and who meet Part B (special education) eligibility requirement and who have an IEP signed by the parent may attend Part B preschool programs. § 22.1-213

8 VAC 20-81-240 Eligibility for funding – Does not exceed federal regulations.

8 VAC 20-81-250 State funds for local school divisions

Provision	Source of Requirement	Discussion
Requirements associated with ADM, transportation, regional special education, jails, homebound services, CSA and foster care funding	COV VA Appropriations Act CSA Administrative Requirements Prior Virginia Regulations	Ensure VDOE meets general supervision responsibilities under IDEA. § 22.1-211

for LEAs		

8 VAC 20-81-260 Federal Funds – Does not exceed federal regulations.

8 VAC 20-81-270 Funds to assist with the education of children with disabilities in state-operated programs

Provision	Source of Requirement	Discussion
Requirements	COV VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirement. First included in Virginia Regulations in 1980. COV § 22.1-7. For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.

8 VAC 20-81-280 Funding, withholding, and recovery of funds

Provision	Source of Requirement	Discussion
Withholding funds	COV	Allows the SEA to withhold state and federal funding when a locality fails to establish and provide a system of free and appropriate education for children with disabilities and use the funding to provide services. COV § 22.1-214 E.

8 VAC 20-81-290 Appeal of administrative decision regarding funding

Provision	Source of Requirement	Discussion
Requirements	Education Division General Administrative Regulations (EDGAR) New in 2001-02 Virginia Regulations	SEA was required to create appeal mechanism under the EDGAR provisions.

8 VAC 20-81-300 Use of public and private insurance – Does not exceed federal regulations

8 VAC 20-81-310 Attorneys' fees – Does not exceed federal regulations

8 VAC 20-81-320 Additional responsibilities of state boards, agencies, and institutions

Provision	Source of Requirement	Discussion
Requirements for State-operated programs	COV Prior Virginia Regulations	Incorporated COV. §§ 22.1-7; 22.1-340; 22.1-347; 22/1-348; 22.1-289; 16.1-293. Ensured SEA's general supervision responsibilities under IDEA.
Caseloads	VA Appropriations Act Prior Virginia Regulations	Incorporated Appropriations Act requirements. Ensured SOP compliance with SEA's requirements.

8 VAC 20-81-330 Compliance with § 504 of the Rehabilitation Act

Provision	Source of Requirement	Discussion
Compliance requirements	Prior Virginia Regulations	Clarified the obligation of the State-operated programs and the Virginia schools; to ensure compliance with VDOE's state 504 Plan. First included in regulations in 1990.
Grievance procedures	Section 504 of the Rehabilitation Act	Clarified that LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints.
Use of due process	LEA Responsibility	For clarity, provisions were added indicating that the costs for the use of due process procedures by LEAs to resolve 504 complaints would be 100% the responsibility of the LEA. Further, for clarity it was noted that VDOE trains Special Education Hearing Officers in Section 504.

Appendix A. Caseload maximums

Provision	Source of Requirement	Discussion
Caseloads	SOQ VA Appropriations Act Prior Virginia Regulations	Defines caseloads as funded by the SOQ formula in the VA Appropriation Act.

Town Hall Form – Attachment #2

Proposed Regulation Agency Background Document

NOIRA Public Comment Summary

Comments Received*	***Agency Response***
***Consent* (8 VAC 20-80-70 E.) - 183 comments** o 130 comments from LEA personnel, 2 from VCASE, 1 each from a parent and a citizen indicated opposition to at least one or more parent consent requirements beyond federal regulations. o 14 comments from parents, 5 comments from the Virginia Coalition, 3 comments from Just Children, and 1 comment each from SSEAC, PEATC, an IHE, and an advocate were in support of maintaining at least one or more of the additional parent consent requirements currently in effect. o 15 comments from parents and 1 comment each from SSEAC, Just Children, an advocate, and an IHE indicated that the regulations should distinguish "refusing" services from "failure to sign an inadequate IEP," noting that if a parent fails to sign an inadequate Individualized Education Program (IEP), the LEA should still be required to provide a free appropriate public education (FAPE). o 1 comment from the Virginia Coalition supports maintaining current regulation 8 VAC 20-80-70 E.4.c: "Parental consent is not required before administration of a test or other evaluation is used to measure…and is included in the IEP". o 2 comments from the Virginia Coalition support maintaining requirements regarding LEAs' reasonable measures to obtain parental consent and the documentation of those efforts. o 1 comment from the Virginia Coalition supports clarifying that parents have the right to revoke consent.	➢ In order to limit unnecessary requirements while also protecting the rights of parents and children, the Board of Education eliminated the consent requirement for partial or complete termination of services.
***Exceeding Federal Regulations* - 142 comments** o 96 comments from special education administrators, 42 comments from other LEA personnel and 3 comments from VCASE support not exceeding federal regulations. o 1 comment from the Virginia Coalition indicated the need to exceed federal regulations.	➢ In order to limit unnecessary requirements while also protecting the rights of parents and children, the Board of Education limited requirements in excess of those required by federal regulations.

*Institute of Higher Education (IHE), Just Children (JC), Learning Disabilities Association of Virginia (LDAV), Local Educational Agency (LEA), Parent Educational Advocacy Training Center (PEATC), State Special Education Advisory Committee (SSEAC), Training and Technical Assistance Center (T/TAC), Virginia Coalition of Students with Disabilities (Virginia Coalition), Virginia Council of Administrators of Special Education (VCASE)

Local Advisory Committees **(8 VAC 20-80-90 E.) - 138 comments** o 40 comments from LEA personnel support eliminating requirement for local advisory committees (LACs). o 16 comments from parents, 3 comments from citizens, and 1 comment each from an IHE, an advocate, Just Children, an LEA employee, and the SSEAC support the continued requirement for LACs. o 36 comments from LEA personnel and 1 comment from VCASE support the need for balanced representation by varied disabilities. o 36 comments from LEA personnel and 1 comment from VCASE support including school personnel as voting members of LACs.	➢ Due to the long-standing requirement for local advisory committees and a history of their contributions, the Board of Education maintained a requirement for local advisory committees that reflect membership diversity and flexibility.
IEP Content **(8 VAC 20-80-62 F.) - 129 comments** o 15 comments from parents, 1 comment each from an advocate, a citizen, an IHE, LDAV, PEATC, the Virginia Coalition and the SSEAC support the requirement for short-term objectives or benchmarks for all IEPs. o 80 comments from LEA personnel and 1 comment each from VCASE and a citizen support the use of short-term objectives only for students participating in alternate assessments. o 14 comments from parents, 1 comment each from an advocate, an IHE, Just Children, and SSEAC support providing IEP progress reports at the same intervals used for students without disabilities. o 1 comment each from LDAV and a citizen support including timelines and specific data for measuring student's progress toward annual goals. o 1 comment from the Virginia Coalition suggested a revision to current IEP content to include addressing the federal requirement for services based on peer-reviewed research in order to ensure that the child's education will be improved by using methods tested and proven to work. o 1 comment from Just Children suggested adding a provision that would clarify that IEPs can (and should) contain specific instructional methodologies when necessary for a child to receive FAPE. o 1 comment each from the Virginia Coalition and Just Children expressed support for requiring that both academic and functional performance be reflected in the Present Level of Performance. o 1 comment from PEATC indicated a need to clarify that measurable goals are to address progress in the general curriculum and meet other educational needs, and should be based on standardized measurement criteria, including peer-reviewed research, if possible, or contain interim measures of progress to hold schools accountable.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to IEP content required by federal regulations.
Timeline - Evaluation/Eligibility **(8 VAC 20-80-54 H.) - 112 comments** o 88 comments from LEA personnel, 14 comments from parents, and 1 comment each from VCASE, SSEAC, an IHE, Just Children, and an advocate supported the continued use of the 65 day timeline.	➢ Virginia has a long-standing 65 day timeline for which there was support from public

o 1 comment each from an advocate, the Virginia Coalition and PEATC supported the use of the federal default 60 calendar day timeline. o 2 comments from LEA personnel supported clarification of the triggering event for the timeline (i.e., receipt by the central office, child study committee, or building level staff).	comment. The Board of Education maintained the 65 day timeline in the draft regulations for initial evaluations, but clarified that the 65 day timeline for an initial evaluation is triggered by the date of parental consent for the evaluation.
Discipline – Functional Behavioral Assessments (FBAs) & Behavioral Intervention Plans (BIPs) **(8 VAC 20-80-68 C. 2. d.) - 107 comments** o 82 comments from LEA personnel and 1 comment from VCASE supported deleting 11th day requirements. o 15 comments from parents, 3 comments from the Virginia Coalition, and 1 comment each from an advocate, an IHE, Just Children, SSEAC, PEATC and a school social worker supported restoring 11th day requirements.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to discipline required by federal regulations. The 11th day requirement was not included.
Eligibility – Specific Learning Disabilities (SLD) **(8 VAC 20-80-56 C. 7. & G.) - 91 comments** o 76 comments from LEA personnel, 1 comment each from VCASE and the Virginia Coalition supported the use of a response-to-intervention (RTI) approach with no requirement in the regulations for severe discrepancy. o 4 comments from the Virginia Coalition supported the inclusion of federal language regarding SLD eligibility determinations. o 2 comments from LDAV, 2 comments from citizens, and 1 comment each from an LEA representative and a parent supported the development of state criteria for identification, 1 of which suggested alternative discrepancy criteria if the discrepancy model is used. o 1 comment each from LDAV and a citizen indicated the need for guidelines and training for response-to-intervention. o 1 comment from LDAV indicated that LEAs be required to inform parents in writing and be involved in an RTI process when students receive intervention more than is common in general education setting.	➢ To provide maximum flexibility to local educational agencies while also providing additional guidance on the determination of eligibility for special education and related services, the draft regulations allow response-to-intervention as well as other criteria such as severe discrepancy.
Evaluations for post-secondary program admission **- 84 comments** o 83 comments from LEA personnel and 1 comment from VCASE agreed that schools not be required to conduct evaluations for entrance requirements for vocational rehabilitation programs, colleges or other postsecondary settings.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational

	agencies and schools are subject, the draft regulations specifically indicate that schools are not required to provide post-secondary program admission evaluations.
***Accountability for Instruction* - 83 comments** o 38 comments from LEA representatives commented on the tension between the emphasis on academics and the need for IEP teams to have flexibility to develop an educational plan to meet the needs of students – especially for students with moderate to severe disabilities who need functional skills taught. o 38 comments from LEA representatives indicated that instructional accountability lies in the realm of general education – not special education. o 2 comments from parents and 1 comment each from a Part C representative and an LEA representative indicated the need for additional curriculum options other than SOL requirements for students with disabilities. o 2 comments from parents supported off-level testing to measure student progress. o 1 comment from a parent indicated that requirements for a standard diploma need to be changed to allow students with disabilities to graduate with a standard diploma without verified credits stating that Modified Standard Diploma or Special Diploma is not sufficient for entry into postsecondary settings.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required. As such, testing for accountability is designed in compliance with federal NCLB requirements, and local accountability for achievement is the responsibility of the local educational agency.
***Private Schools* (8 VAC 20-80-66) - 82 comments** o 78 comments from LEA representatives indicated the need for clarification of responsibilities and distinctions for preschool children and school-age children placed in private schools, and those placed through CSA. o 2 comments from PEATC suggested that: • language should be included that clarifies that parents who decline special education services and place their child in a private preschool would be considered to be parentally placed since private preschools are not necessarily providing elementary education. • regulations should specify that if the parent of a child privately placed outside his home LEA would like to enroll the child in the home LEA, the home LEA would be responsible for evaluating the child. o 1 comment from a parent supported promoting access to private schools for students with disabilities. o 1 comment from the Virginia Coalition supports maintaining all provisions related to private school placement by IEP teams in 8 VAC 20-80-66 A.	➢ The proposed regulations include only the regulatory language required by the federal regulations with respect to private schools.

Transition Age **(8 VAC 20-80-62 F. 9. & 10.) - 81 comments** o 14 comments from parents, 4 comments from IHEs, 4 comments from LEA representatives, 2 comments from T/TACs, 2 comments from citizens, and 1 comment each from a VDOE staff, LDAV, an advocate, a private school representative, a vocational rehabilitation counselor, the Virginia Coalition, and the SSEAC supported the continuation of age 14 for transition services in IEPs. o 45 comments from LEA representatives and 1 comment from VCASE supported the use of age 16 for required transition services in IEPs. o 1 comment from Just Children supported the use of transition services beginning in 9th grade for students who are not slated to graduate with a standard or advanced diploma. o 1 comment from PEATC which suggested the need for clarification of which transition activities occur at which age.	➢ Despite the desire to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education maintained the age 14 requirement for transition based on the need to ensure that students with disabilities meet certain transition expectations upon their graduation or exit from public schools.
Due Process Procedures **(8 VAC 20-80-76) - 72 comments** o 43 comments from LEA representatives and 1 comment from VCASE opposed non-attorney representation of parties and supported the requirement that parties be represented at their own expense by attorneys. o 21 comments from the Virginia Coalition recommended a number of revisions to the due process procedures including alignment with federal requirements, which would impact initial pleadings and their amendments, statute of limitations, administration of oaths, hearing officer qualifications and responsibilities, exchange of evidence, applicable timelines and their extensions, recovery of attorney fees for LEAs, expedited disciplinary hearings, and appeal procedures. o 1 comment each from a Part C provider and a parent supported making the due process system free to parents such as payment to witnesses. o 1 comment from a parent suggested requiring LEAs to provide information requested in a timely manner or have related testimony by the LEA contradicted. o 2 comments from a parent recommended: ▪ requiring that hearing officers know the regulations before they hear a case, and ▪ requiring an equal number of hearing officers with experience representing students as those having experience representing schools. o 2 comments from the Virginia Coalition suggested: ▪ retention of the provision requiring VDOE to share information on the qualifications of hearing officers with parents and school divisions, upon request, and allowing either party to object to the appointment based on conflict of interest; and ▪ exclusion of people who are employees of elementary and secondary school-related organizations as hearing officers.	➢ The draft regulations provide for all rights guaranteed by IDEA and the federal Part B regulations with respect to due process hearings. To minimize state regulations that exceed the federal requirements, responsibility for the implementation of the due process hearing system has been shifted exclusively to VDOE, rather than the responsibilities being shared, in part, with the Supreme Court of Virginia. VDOE's responsibilities include the establishment of procedures to ensure compliance with federal due process requirements, while maintaining an effective and efficient due process system.

Least Restrictive Environment **(8 VAC 20-80-64) - 70 comments** o 47 comments from LEA representatives and 1 comment from VCASE supported distinguishing between placement and location, thus allowing the LEA to determine site/location of services. o 15 comments from parents, 2 comments from Just Children, and 1 comment each from PEATC, an advocate, an IHE, and SSEAC commented that regulations need to clarify the process and requirements related to placements in the least restrictive environment (LRE) to inform parents about their rights and ability to make appropriate decisions concerning opportunities in the general education curriculum. o 1 comment from a parent indicated the need for a guarantee that all children with an IEP be given the option to participate 25-100% of class in instruction in an inclusive environment.	➢ The 4th Circuit decision of May 2007 (*A.K. vs Alexandria*; currently on appeal) suggests that school divisions may not be able to distinguish location from placement. Other LRE requirements are limited to those included in the federal regulations.
Mediation **(8 VAC 20-80-74) - 47 comments** o 42 comments from LEA representatives and 1 comment from VCASE supported requiring parties to sign a confidentiality pledge to ensure that decisions during the mediation remain confidential, irrespective of the mediation results. o 1 comment from Just Children supported allowing mediators to attend school meetings subsequent to mediation to serve as a facilitator of the agreement reached. o 1 comment from the Virginia Coalition indicated that 8 VAC 20-80-74 F.1. should be maintained, thus not allowing an employee of any LEA or VDOE to serve as a mediator if providing direct services to a child who is the subject of the mediation process. o 1 comment from the Virginia Coalition supported retaining the requirement that mediation be held in a timely manner and at a location convenient to both parties and that content of the mediation agreement comport with federal requirements, including who signs the agreement, that discussions be confidential, and that it may not be used as evidence in subsequent due process of civil proceedings and that they contain a pledge to that effect, and that agreements are enforceable in any State/district court of competent jurisdiction. o 1 comment from the Virginia Coalition supported the availability of mediation at all stages of the process – not just for due process.	➢ The draft regulations include a system of mediation as required by Part B federal regulations that uses mediators to meet with disputants to work toward an agreement in a confidential setting. It does not include additional responsibilities for mediators such as attendance at IEP meetings. Mediation may be used at any time during the special education process.
Eligibility -- Developmental Delay **(8 VAC 20-80-56 F.) – 46 comments** o 42 comments from LEA representatives and 1 comment from VCASE supported the use of developmental delay only for the 2-5 age range. o 1 comment each from an LEA representative, the Virginia Coalition and PEATC supported the continued use of developmental delay for students from 2-5 and from 5-9.	➢ Based on support from public comment, the Board of Education included only those children from 2-5 as eligible for a developmental delay classification. Preschoolers who need special education and related services may be

	eligible using this identification prior to meeting the criteria for other disability areas.
***Paperwork Reduction* - 40 comments** o 40 comments from LEA representatives stressed the importance of reducing paperwork	➢ The Board of Education minimized the paperwork wherever possible by limiting regulations, where appropriate, to only those federally required.
***Response to Intervention* [other than SLD Eligibility] - 39 comments** o 38 comments from LEA representatives indicated that a requirement for response-to-intervention will result in a fiscal impact requiring restructuring, professional development, and additional staff to implement. o 1 comment from PEATC supported the development of criteria for RTI and other early intervening services.	➢ The Board of Education included response to intervention as one of the possible ways to document a disability based on the federal regulations and the support from literature and research.
***Definitions* - [See below for each specific term in alphabetical order] (8 VAC 20-80-10) – 29 comments** <u>Change in Placement</u> - 2 comments • 1 comment each from Just Children and the Virginia Coalition suggested adding the language, "any change in setting for a student receiving special education that does not replicate all elements of the educational program of the student's previous setting" based on A.W. v Fairfax County School Board, 372 F. 3d 674,682 (4th Circuit). The Virginia Coalition suggested maintaining the current triggers for a change in placement, and Just Children suggested including, "a series of short-term suspensions totaling more than 10 cumulative days and that constitute a pattern as defined in this chapter" to be consistent with federal language and with state manifestation language. <u>Child with a Disability</u> - 1 comment • 1 comment from an LEA representative supported recognizing "deaf-blind" as a disability separate from others. <u>Consent</u> – 2 comments • 1 comment from PEATC suggested the need to clarify the meaning of "informed consent." • 1 comment from PEATC suggested not using "consent" and "agreement" since they mean similar things. It was suggested that only "parental consent" be used. <u>Educational Performance</u> – 2 comments	➢ Terms and definitions used in the draft regulations were based on language from the federal Part B regulations, other state or federal regulations, or were developed to clarify, as necessary, certain aspects required by the federal regulations such as the term, "parent." . ➢ Criteria were included in the eligibility section of these draft regulations for certain disability categories to assist in clarifying which students are eligible under these categories.

• 1 comment each from Just Children and the Virginia Coalition supported defining educational performance as "all aspects of a child's performance in school including academic achievement, performance on benchmarks and other achievement tests, as well as functional performance." Emotionally disturbed – 2 comments • 1 comment each from PEATC and an LEA representative suggested changing the term "emotionally disturbed" to "emotional disability". Evaluation – 1 comment • 1 comment from the Virginia Coalition suggested including definitions for both evaluation and assessment to clarify the ambiguity. Functional Behavior Assessment - 1 comment • 1 comment from the Virginia Coalition supported clarifying that an FBA is an evaluation, allowing parents to obtain an Independent Educational Evaluation (IEE) when they disagree. Mental retardation – 1 comment • 1 comment from PEATC suggested changing "mental retardation" to "intellectual disability". Other Health Impaired – 1 comment • 1 comment from PEATC suggested including Tourette Syndrome in the definition for Other Health Impaired. Parent – 5 comments • 1 comment each from the Virginia Coalition, Just Children, and a Parent Resource Center supported additional language that would allow foster parents to serve as the parent for purposes of special education in specific instances and not require a surrogate. • 1 comment from PEATC recommended adding language that would define the rights of parents in joint custody situations when the parents disagree with regard to consent requirements. • 1 comment from a Parent Resource Center indicated the need to clarify requirements regarding social worker service providers acting as a parent for students in their care. Related Services – 7 comments • 1 comment from a parent, 2 comments from citizens, and 2 comments from LEA representatives support adding "interveners" in the definition of interpreters to provide an alternative to interpreters for deaf-blind students since interveners are successful in promoting educational progress. • 1 comment from a Parent Resource Center suggested maintaining the current definition rather than adding additional services, but suggested noting that the list is not exhaustive; also suggested developing a separate training guide. • 1 comment from a parent indicated that the exception for surgically implanted devices is very broad and could provide an excuse to refuse a child admission to school due to responsibilities associated with some devices.	

Supplementary Aids and Services – 2 comments • 1 comment each from Just Children and the Virginia Coalition supported including a non-exhaustive list as guidance to schools and parents on the types of aides and services that may be provided. Transition Services - 2 comments • 1 comment each from Just Children and the Virginia Coalition supported the addition of language to comport with federal regulations including examples to provide clarity.	
***Foreword Content* – 17 comments** • 14 comments from parents, and I comment each from SSEAC, an advocate, and an IHE indicated that the language in the Foreword needs to be expanded to include the intent of "high expectations" and "educating children in the regular classroom to the maximum extent possible . . . prepared to lead productive and independent adult lives, to the maximum extent possible."	➢ The following language was included in the Foreword from 34 CFR § 300.199 to indicate expectations; "This federal regulation also requires that State rules, regulations, and policies under the IDEA '04 must support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards."
***Discipline - Long Term Removals General* (8 VAC 20-80-68 C.) – 14 comments** • 10 comments from the Virginia Coalition supported: o revisions to define "substantially similar" to include behaviors caused by the child's disability or had a direct and substantial relationship to it since behaviors may not appear similar but are substantially similar due to the disability; o retention of current factors for determining whether or not the LEA has demonstrated a "substantial likelihood" that a child will injure himself or others if not removed to an IAES placement for up to 45 days); o retention of the requirement to provide services for any subsequent removals after 10 cumulative days to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student's IEP with an addition that would include the provision of FAPE; o requiring that a child receive educational services on the 11th cumulative day of removal; o retention of language that requires that the special education teacher be consulted regarding service determinations for removals that exceed 10 days in a school year; o retention of the current requirement for an IEP team to	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to long-term removals required by federal regulations.

determine the IAES so as to enable the student to continue to progress in the general curriculum, continue to receive services and modifications to enable the student to meet IEP goals, and include services and modification to address the behavior and designed to prevent the behavior from recurring; o that for disciplinary purposes, the definition of "serious bodily injury" be the same as the federal definition and not allow removal for a lesser injury; o adding a provision which requires the following: If a parent does not know how to write or has a disability that prevents a written statement, the LEA must provide personnel and services to enable the parent to express in writing his/her concerns that a child is in need of special education and related services; and information regarding this service must be provided to all parents to protect all children "who are not yet eligible" during disciplinary proceedings; o clarifying that a finding of ineligibility based on an evaluation that is more than 3 years old cannot be the basis for finding the school district is not deemed to know a child has a disability; and o clarifying the ability of the LEA to consider unique circumstances in deciding on a case-by-case basis to remove a child from the classroom. • 1 comment from Just Children supported the inclusion of language providing guidance that in-school and bus suspensions count toward 10 cumulative days of suspensions constituting a pattern. • 2 comments from PEATC supported that the regulations should clarify o that students with disabilities cannot be suspended/expelled for code-of-conduct behavior related to disability; and o that any alternative placement, including home-based instruction, needs to be sufficient for students to make progress in the general curriculum. • 1 comment from a parent suggested retention of current requirements for "stay-put" that allow children to remain in school pending a manifestation determination.	
***Due Process - Resolution Session* – 14 comments** • 1 comment each from SSEAC, Just Children, and the Virginia Coalition suggested that all discussions in resolution meetings be required to be confidential by inserting language similar to that in the mediation provisions. • 1 comment each from the Virginia Coalition and SSEAC suggested that LEAs and parents need to decide collaboratively on participants for the resolution session. • 9 comments from the Virginia Coalition indicated: o that regulations should allow parents to bring advocates and others with special knowledge of the child to the resolution meeting. o that parents should be permitted to seek a hearing officer determination as to whether the parents participated in a resolution session or not, thus allowing the due process to proceed if the hearing officer determines that the parent participated; feels that current requirement would rely on the	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to due process resolution sessions required by federal regulations.

LEA to determine whether the parent participated. o that a new resolution session should not be required if parties amend their complaint in response to a finding of insufficiency. o that it should be required that if the LEA fails to convene the resolution session within 15 days with the required personnel, parents may seek a ruling from the hearing officer within 3 days to start the 45-day due process timeline. o that the regulations include that all LEAs be required to make all reasonable efforts to schedule the resolution session at a mutually agreed-upon time and place and contact the parents within 5 days of receiving the complaint to schedule the meeting. o the need to initiate the 45 day due process timeline (and not wait the 30 days) if the parties waive the resolution session or an agreement cannot be reached. o concerns that the LEA could use the resolution session to prevent due process and that LEAs would be required to use the resolution session only for bona fide attempts to resolve the complaint. o expressing the need in 2 comments for LEAs to use alternative means to ensure parental participation in resolution sessions such as letters, telephone calls, or videoconferencing subject to the parent's agreement.	
***IEP Process* – 14 comments** o 1 comment from PEATC indicated that consensus should be defined as unanimity. o 7 comments from the Virginia Coalition supported: ▪ Retaining current regulations regarding IEP team consensus. ▪ Continued regulations requiring that the IEP team works toward consensus and that the IEP team provides specific guidance regarding the prior notice if consensus cannot be reached. ▪ Retention of current language regarding accommodations even though federal regulations only address program modifications or supplementary aids and services. ▪ Including language to emphasize the use of positive behavioral interventions. ▪ The required involvement of the regular education teacher to address challenging behaviors based on the use of evaluation tools and the full range of behavioral assistance that may be necessary including supports as well as interventions. ▪ The need for IEP teams to continue to consider state and division-wide assessments and add that they must consider "the academic, developmental, and functional needs of the child." ▪ Revising the Notice of Meeting requirements to indicate when a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student as required by federal regulation § 300.322(b)(2)(i)(A). o 1 comment each from a parent and PEATC supported the continued right to audio record meetings. o 3 comments from Just Children suggested: ▪ adding a requirement for school divisions to notify parents of their right to reschedule IEP meetings. ▪ requiring that parents be provided with copies of any IEP, including revised or amended IEPs.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education limited wherever appropriate those provisions pertaining to the IEP process to only those required by federal regulations.

▪ including language to require that IEPs be implemented as soon as possible but not more than 10 calendar days after the IEP was developed or revised – with emphasis on the revised since current language does not address revisions. o 1 comment from a parent suggested including clear guidance on convening an IEP meeting upon parental request, including a time table.	
Discipline – Manifestation Determination Review (MDR) **(8 VAC 20-80-68 C. 5.) – 11 comments** o 1 comment from Just Children suggested requiring the staff member who reported the conduct in question to attend the MDR meeting. o 1 comment from Just Children indicated that MDR teams should be required to document the reasons for their answers to each question they must address. o 1 comment each from Just Children and the Virginia Coalition favored maintaining current requirements for determining when a behavior is a manifestation of a disability in addition to the standards required by IDEA 2004. o 1 comment from Just Children supported requiring MDR meetings to be recorded upon parent request. o 6 comments from the Virginia Coalition supported: ▪ a requirement for IEP teams to review positive behavioral strategies and develop an appropriate BIP after an FBA even if the behavior is not a manifestation of the disability. ▪ a requirement for LEAs to work with parents to select members of the MDR team and allow the parents or LEA the discretion to include all individuals with special knowledge or expertise regarding the child, particularly how the disability can impact behavior or understanding and the impact/consequence. ▪ revision(s) to the regulations to indicate that a child's educational placement can be changed only by parental consent unless the LEA meets the requirements included in current regulations that would allow an interim alternative education setting (IAES). ▪ the need to modify current regulations to require that FBA/BIP be required when the behavior is a manifestation of the disability. ▪ that the review of "all relevant information in the child's file" includes all education records of the child as well as new information the parent/LEA has. ▪ that the behavior be determined to have a "direct and substantial relationship to the disability" if the disability significantly impairs the child's behavioral controls (Doe v. Maher, 793 F.2d 1470 - 9th Circuit, 1986).	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to discipline and manifestation determination reviews required by federal regulations.
IEP Team Membership **(8 VAC 20-80-62 C.) – 11 comments** o 1 comment from LDAV and 1 comment from a citizen supported a provision requiring that excusal of IEP team members be in writing and presented to the parent at least one day before the IEP meeting. o 1 comment from the Virginia Coalition opposed allowing IEP team members to be excused with parent consent.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational

o 1 comment from Just Children supported requiring that a request be made to excuse a team member within a reasonable time prior to the meeting, thus allowing some flexibility in case of emergencies, but expecting that in most cases this request be made at least a day or two in advance. o 1 comment from PEATC supported specifying that the LEA representative have the authority to bind the LEA to an agreement reached at an IEP meeting. o 1 comment from PEATC indicated the need to specify whether a parental consent is required if a member presents their report and leaves. o 1 comment from PEATC indicated the need for a clarification that IEP team members whose areas are being discussed be required members. o 1 comment from a parent indicated the need for a provision that would not restrict individuals or friends that would like to attend IEP meetings with parents. o 2 comments from the Virginia Coalition addressed secondary transition IEP team needs and indicated the need to: ▪ Require that the student with a disability be invited to his/her IEP meeting if the purpose of the meeting will be consideration of postsecondary goals and transition services needed to reach those goals. ▪ Require, with the consent of the parent or child who has reached the age of majority, that a representative of another agency that is likely to be responsible for providing or paying for transition services be invited, and take other steps to obtain the participation of the other agency if they do not attend. o 1 comment from the Virginia Coalition indicated the need to add a provision for students transitioning from Part C to Part B that would require an LEA to invite, at the request of the parent, the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.	agencies and schools are subject, the Board of Education included only those provisions required by the federal regulations with respect to IEP team membership.
Eligibility -- General Procedures **(8 VAC 20-80-56 C.1. - C.6., D-E., H.-J.) – 10 comments** o 3 comments from the Virginia Coalition supported maintaining current regulations regarding the following: • Provide procedural safeguards in determining eligibility and insuring confidentiality of records. • The group making the decision work toward consensus and obtain parental consent for initial eligibility and any change in identification. • The group has a written summary consisting of the basis for its determination and signed by each group member present. • The LEA provides a copy of the documentation of the decision to the parent(s). • The group forwards a summary of the group's essential deliberations to the IEP team. • Not requiring that children be identified by their disability. • Providing relevant information to teachers of students who are not found eligible. o 1 comment from PEATC indicated that children should not have to	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those eligibility procedures required by the federal regulations.

wait to fail in order to be found eligible. o 1 comment from PEATC indicated that students with limited English proficiency should not be denied access to special education. o 1 comment each from SSEAC and Just Children indicated the need to add language that would ensure that students who may be performing well academically but whose disabilities affect them in other ways (such as socially, behaviorally, or otherwise functionally) receive special education and FAPE. o 2 comments from Just Children suggested: • that eligibility committees be required to review reports on a child's functional performance in school when interpreting evaluations since federal regulations now require that IEPs address both academic and functional performance. • that remediation be required in accordance with the Standards of Quality (SOQ) if students are found not eligible due to inadequate instruction in math or reading or are limited English proficient. o 1 comment from a parent suggested that guidance/criteria be provided for identifying students with high functioning Asperger's or Autism and nonverbal learning disabilities.	
***Transition – General* – 8 comments** o 1 comment from a parent suggested that schools be held accountable for transition plans and require schools to develop, with the student, a final report for each IEP student as they exit high school; also provide training/marketing for school administrators and teachers on the transition plan along with materials to be provided to families to assist with monitoring school transition plans for compliance. o 1 comment from the Virginia Coalition suggested revising regulations to include language specifying that postsecondary goals based on transition assessments be included in the IEP for students turning 16 and that transition services be included to assist the student in reaching the postsecondary goals. o 1 comment from a T/TAC suggested emphasizing training and continuity with the summary of performance. o 1 comment from PEATC suggested that students who leave special education without a diploma receive a summary of performance based on current evaluation that will be useful to document the disability for accessing accommodations, services, and programs included in the transition plan. o 1 comment each from an IHE and a T/TAC indicated the importance of evaluations to the transition process. o 1 comment each from LDAV and a citizen suggested that the required summary of academic achievement and functional performance include enough documentation to assist in successful transition to postsecondary education or employment.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education, with one exception, included only those provisions pertaining to transition requirements that are required by federal regulations. To ensure that students with disabilities meet certain transition expectations, the LEA's responsibilities for completing a summary of academic achievement and functional performance for a child who exits without a standard or advanced diploma, and then later returns to school, was added.
***Evaluations - General* (8 VAC 20-80-52 and 8 VAC 20-80-54) – 6 comments** o 1 comment from Just Children supported retention of language that allows referrals from any source in either oral or written form but	➢ In order to respect the intent of Part B of the Act to

suggested adding language to clarify that interventions cannot be implemented instead of conducting an evaluation. o 1 comment from the Virginia Coalition suggested retention of all current provisions for referral including child study committees to ensure a well-defined referral process. o 2 comments from SSEAC suggested: • clarifying the basis for referrals which includes functional performance and clarifying that educational performance means all aspects of a child's performance in school, including but not limited to academic achievement, performance on benchmark and other tests, as well as functional performance; and • retention of current language that allows anyone to make a referral for a special education evaluation. o 1 comment from a special education administrator indicated that no changes are needed to the evaluation provisions. o 1 comment from a parent suggested that if the school division determines that no testing needs to be conducted for a triennial evaluation, that parents should be provided the option of having their child tested to assess progress on IEP goals using normed testing.	minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required by the federal regulations with respect to referrals and evaluations for special education. Although the Child Study Committee requirement is a long-standing provision, the Board deleted the requirement for Child Study Committees to allow maximum flexibility for LEAs to develop their own procedures and timelines, including the use of research-based strategies and Response to Intervention.
***Procedural Safeguards - Parent Participation* – 5 comments** o 4 comments from the Virginia Coalition supported: ▪ retention of current notice requirements to parents regarding meetings for identification, evaluation, and placement including notice early enough to ensure that they have an opportunity to participate. ▪ retention of the provision that states that meetings do not include informal conversations by LEA personnel if those issues are not addressed in the IEP. ▪ the addition of a requirement allowing parents to participate in IEP and placement meetings, including phone or video conferencing, and that placement decisions only be made without parents if the LEA has a record of attempts to involve the parents. ▪ retention of current requirement for LEAs to make reasonable efforts to ensure that parent(s) understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent or parents with deafness, or whose native language is other than English. o 1 comment from a parent indicated that the time frame schools have to respond to parents should be shortened.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required by the federal regulations with respect to procedural safeguards.
***Complaints Process* (8 VAC 20-80-78) – 4 comments** o 2 comments from the Virginia Coalition encouraged: • maintaining the current provisions in the complaint process which outline the remedies available when VDOE finds a LEA failed to provide appropriate services. • the use of mediation but indicated the need to prohibit other	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies that exceed federal requirements

forms of dispute resolution such as binding arbitration since private entities resolving complaints will not be subject to accountability. o 1 comment from Just Children supported maintaining exceptions to the one-year limitation period for bringing a complaint. o 1 comment from PEATC encouraged VDOE to accept and investigate complaints for 504 violations.	the Board of Education included those provisions required by the federal regulations with respect to complaint procedures. Remedies remain within VDOE's authority. The Office of the Attorney General has advised VDOE that it has no authority to enforce Section 504.
***Procedural Safeguards Notice* (8 VAC 20-80-70 D.) – 4 comments** o 1 comment from a parent indicated that the notice should include the rules/regulations regarding testing (i.e., consent, timelines, how parents receive test results). o 1 comment from the Virginia Coalition supported compliance with all requirements for providing procedural safeguards including a stipulation that placing a copy of the PSD on the internet is not a substitute for giving the notice to parents in hard copy. o 1 comment from Just Children supported the addition of a provision that would require that notices to parents inform them about their right to reschedule meetings. o 1 comment from PEATC suggested identifying PEATC in the procedural safeguards notice as Virginia's parent training and information center and a source for further information.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to the procedural safeguards required by federal regulations.
***Staffing Requirements* (8 VAC 20-80-45) – 4 comments** o 1 comment from an interpreter suggested that the interpreter qualifying test be changed for school interpreters to reflect classroom interpreting – suggested the use of Educational Interpreter Performance Assessment (EIPA). o 1 comment from an interpreter suggested adding to the sign language job description, ". . . when there is low or delayed learning, tutoring should be incorporated with interpreter's duties when necessary." o 1 comment from an LEA representative indicated a discrepancy between the requirement that public school teachers be "highly qualified" (HQ) and the specific exclusion that HQ requirements do not apply to private school teachers who are hired or contracted by an LEA to provide equitable services. This commenter questioned the ability of private school teachers to provide "equitable" services if not considered "highly qualified." o 1 comment from a parent suggested that regular education teachers be trained in at least the basics of special education.	➢ Requirements were included in collaboration with the Department of Deaf and Hard of Hearing and require that interpreters pass both the written portions of the test and achieve a Level III status for performance. ➢ Requirements for "highly qualified" were included as required by Part B of the Act.
***Educational Records* (8 VAC 20-80-70 G.) – 3 comments** o 1 comment from the Virginia Coalition suggested retention of current language related to Confidentiality of Information but also indicated a desire to require that copies of educational records be provided to	➢ In order to respect the intent of Part B of the Act to minimize the number of rules,

parents at reasonable cost and amended to allow parents to have photocopies of their children's records under all circumstances. o 1 comment each from LDAV and a citizen suggested that the regulations clarify that parental consent is not required for a school division to send student records to a receiving school and that failure to promptly respond to a request for records may result in a state complaint.	regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to educational records included in the federal regulations implementing Part B of the Act and FERPA.
***Independent Educational Evaluation* (8 VAC 20-80-70 B.) – 3 comments** o 3 comments from the Virginia Coalition suggested: • that, with parental consent, experts be given the right to conduct an IEE to include, but not be limited to, classroom observations in accordance with local procedures and guidelines. Currently, some LEAs deny parent-chosen experts access to classroom observations. • that parents not be limited to one IEE in a child's entire school year and that a school district may not use cost as a barrier to an IEE; and • that regulations be aligned to federal regulations (§ 300.502) to include the ability of parents to use an evaluation obtained at their expense at due process hearings if the parent shares the evaluation with the school division, and if a parent does not share the evaluation with the school division, it may not be used as evidence.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to independent educational evaluations required by federal regulations.
***Monitoring/Enforcement* – 3 comments** o 1 comment from PEATC suggested that the regulations specify that students placed in special schools or on homebound instruction or students suspended or expelled be counted for the purposes of school report cards as a part of the home school child count. o 2 comments from a parent suggested: • punitive fines for principals and superintendents who do not comply with the IEP regulations; and • an annual audit or all school records be audited annually with noncompliance findings resulting in the loss of existing funding for typically developing students (similar to SOL funds).	➢ Monitoring and enforcement is a requirement of the federal regulations and a system is in place that conforms with federal requirements.
***Program/Service Specific comment* – 3 comments** o 1 comment from a parent indicated that children should not be in a cross-category class and that there should be a wider range of specialized classes where individual disabilities may be addressed; mixing students makes it difficult for teachers and students according to this parent. o 1 comment from a parent indicated that related services should be relatively close to the main classroom without need to travel to other	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations, and policies to which local educational agencies and schools are subject, the Board of

floors, out of the main building to trailers, or across parking lots. o 1 comment from a parent indicated that post-high school programs deserve further support and that it has provided a 21-year-old with Down Syndrome job skills and living skills.	Education maintained program standards to provide flexibility to schools to meet student needs.
***Surrogate Parents* (8 VAC 20-80) – 3 comments** o 1 comment from the Virginia Coalition suggested that "natural parent" be changed to "biological or adoptive parent" and that a provision be added consistent with the definition of "parent" which would expand the list of those able to serve as a parent for purposes of special education and minimize the need for surrogate parents. o 1 comment from Just Children suggested that the regulations reflect an increased number of persons who now are deemed "parents" by the federal IDEA 2004 regulations, thus decreasing the circumstances in which LEAs have to go through the process of appointing surrogate parents. o 1 comment from SSEAC suggested that surrogate parents' roles be defined and that the regulations include full definitions for other non-biological parents.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education, where appropriate, limited the provisions pertaining to surrogate parents to only those required by federal regulations. The definition of "parent", however, is broadened and minimizes the number of students who will need a surrogate parent for special education.
***Transfer Students* (8 VAC 20-80-56 K.) – 3 comments** o 1 comment from a school superintendent suggested the adoption of language which would require only consultation with the parent of a transfer student (either in-state or out-of-state) before providing "comparable" services. The current regulations require parental consent, exceeding federal regulations. o 1 comment from PEATC suggested adding language that would clarify that IEPs of students who transfer between the Department of Correctional Education and local school divisions would be implemented as well as clarify the requirements for transfer IEPs for children who are homeless or in foster care. o 1 comment from Just Children suggested retention of the requirement that the LEA in which a transfer student enrolls must immediately implement the most recent IEP for the child until the LEA determines whether to adopt the IEP, and if a child enrolls without a copy of the IEP, the child still receive FAPE immediately.	➢ This section, which was previously Virginia-specific, was revised in accordance with new federal requirements and guidance to ensure clarity, while minimizing the number of rules, regulations and policies to which local educational agencies and schools are subject.
***Age of Majority* (8 VAC 20-80-72) – 2 comments** o 2 comments from PEATC suggested that: • protections be included for students who opt out of school before graduation to address their need to understand the repercussions of their decision and provide them with opportunities to receive special education services if they change their minds; and • parents be included as invited members of the IEP team, as	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included all rights

appropriate, even though rights have been transferred to the student.	for students included in the federal regulations. Students who continue to be eligible and fall within the required ages of Part B of the Act but have reached the age of majority maintain the same protections that they had as minors.
Child Find **(8 VAC 20-80-50) – 2 comments** o 1 comment from Just Children suggested that language be added to the description of those children targeted in a child find campaign to include students who are performing well on academic tests or other measures of academic performance to ensure that these students are considered for evaluation for special education. o 1 comment from the Virginia Coalition suggested that the language be maintained which requires local school divisions to coordinate child find activities for infants and toddlers, birth to age two, inclusive) with the Part C local interagency coordinating council.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to Child Find required by the federal regulations, or the *Code of Virginia*. Transition requirements from Part C to Part B programs are included in these requirements.
Child Study Teams **(8 VAC 2-80-50 C. 3.; 8 VAC 20-80-52) – 2 comments** o 1 comment from a special education administrator suggested clarification of procedures regarding parent requests for evaluations. o 1 comment from a special education administrator supports the continued use of child study teams as defined currently or a less structured process allowing greater flexibility.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to Child Find that were required by federal regulations or the *Code of Virginia*. As such, Child Study teams are not included in the draft regulations.
Dispute Resolution – General **(8 VAC 20-80-74; 8 VAC 20-80-76; 8 VAC 20-80-78) – 2 comments** o 1 comment from the Virginia Coalition suggested permitting a signed resolution agreement to be enforced through the Complaint Procedures as well as in state or federal court. o 1 comment from PEATC suggested clarifying that dispute resolution	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to

agreements should not forfeit the parent's or student's procedural safeguards rights, as in agreeing never to file another complaint for the same reason again.	which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to disputes which were necessary to implement the federal mandates.
***Early Intervening Services* – 2 comments** o 1 comment each from a citizen and LDAV suggested that the regulations clarify that students with disabilities may benefit from early intervening services provided to students without disabilities and that early intervening services should include related services such as speech, psychological services, and counseling.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to early intervening services required by federal regulations.
***Eligibility Group Composition* (8 VAC 20-80-56 B.) – 2 comments** o 1 comment from a special education administrator suggested that the same members should be able to serve on both eligibility and IEP teams. o 1 comment from the Virginia Coalition suggested changing the composition of the eligibility team to include the following for all eligibility teams (currently only required for SLD): • the child's regular teacher (if the child does not have a regular teacher, one qualified to teach a child of that age or for a child less than school age, an individual qualified to teach a child of that age) and • at least one person qualified to conduct diagnostic examinations of children, such as a school psychologist or a speech-language pathologist.	➢ To ensure the accuracy and consistency of eligibility decisions, the composition required by the federal regulations for SLD determinations was expanded to apply to all eligibility groups, and to include LEA personnel representing the disciplines providing assessments, the special education administrator or designee.
***FAPE* (8 VAC 20-80-60) – 2 comments** o 1 comment from a parent suggested that the exception of surgically implanted devices could make it difficult for some children with disabilities to attend school, unless that right is protected. o 1 comment from an LEA representative suggested that parents should play a role and have responsibility along with schools to ensure students with disabilities have an equal opportunity to participate in nonacademic and extracurricular activities.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included all provisions from the federal regulations required for the provision of FAPE.

Use of Insurance **(8 VAC 20-80-70 F.; 8 VAC 20-80-152) – 2 comments** o 2 comments from the Virginia Coalition supported state regulations that require parental consent before releasing educational records to both private and public insurance programs for billing in accordance with the Management of the Student's Scholastic Record in the Public Schools of Virginia. Release of information to insurance companies should not have lesser protections than other third parties.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included all requirements from the federal regulations pertaining to the use of private or public insurance to pay for special education and related services.
Parent Resource Center **– 2 comments** o 1 comment from a parent suggested that the state provide funding for community-based Parent Resource Centers rather than school-based centers. o 1 comment from a parent suggested that local school divisions should be required to have Parent Resource Centers so parents can have someone other than LEA personnel explain their rights.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education did not include Parent Resource Centers as a requirement for localities despite its encouragement that localities consider having Parent Resource Centers.
Preamble Content **(Preamble) – 2 comments** o 2 comments from Just Children indicated: • language should be included to explain the policy and purpose of special education regulations so that users will understand the underlying premise using language more easily understood and accessible by non-attorneys. • that Article VIII of the Constitution is incorrectly identified as Article VII and that language quoted from VA Code § 22.1-214 is missing the words, "educate and."	➢ The correction was made as noted that pertained to the *Code of Virginia*. Otherwise, the Preamble accurately reflects the purpose of the regulations.
Age 2 Eligibility **(8 VAC 20-80-30 1; 8 VAC 20-80-40 B.)** o 1 comment from the Virginia Coalition suggested maintaining the requirement to provide services to children with disabilities beginning at age two.	➢ The *Code of Virginia* currently requires special education from age 2, thus these draft regulations continue to

	require special education for children who are identified as eligible under these regulations from age 2 (with 2 defined as the student's age by September 30 of a given year).
Alignment with other state requirements o 1 comment from SSEAC requested that the regulations align with other state requirements including the Comprehensive Services Act (CSA), and the Standards of Accreditation (SOA), particularly as they may apply to transition and diploma requirements.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education did not include additional regulations except as necessary to clarify the link between these state requirements and other state special education requirements.
***Annual Plan* (8 VAC 20-80-90 A-C)** o 1 comment from a citizen supported that the annual plan report with the Flow through Funds Request should address the No Child Left Behind Act achievement gaps and be submitted by the LAC and signed by the Committee Chair.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those requirements for the annual plan which are required by federal regulations or the *Code of Virginia*.
***Assistive Technology* (8 VAC 20-80-60 E.)** o 1 comment from a parent suggested use of all methods of Augmentative-Alternative Communication, including supported, typing or facilitated communication even if it not considered best practice.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions related to assistive technology required by federal regulations.

Full Federal Funding o 1 comment from an LEA representative indicated that full funding should be provided before any punitive actions are taken against school divisions for noncompliance.	➢ While the Board concurs with the desire for full funding for special education, the Board is required to monitor special education programs as detailed in federal regulations.
Functions of VDOE and SSEAC **(8 VAC 20-80-30 10.)** o 1 comment from the Virginia Coalition supported maintaining current provision related to the SSEAC through which the SSEAC "(a)dvise(s) the Virginia Department of Education on eligible children with disabilities in state, regional, or local adult or juvenile correctional facilities;..."	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies which exceed federal requirements, the Board of Education did not include this provision.
Prior Written Notice **(8 VAC 20-80-70 C.)** o 1 comment from the Virginia Coalition indicated that the regulations should specify the requirement to provide prior written notice "a reasonable time" before the LEA takes or declines to take action, as described in 20-80-70 C.1. If a due process hearing is being requested, the regulations should prohibit an LEA from delaying the notice until it receives a due process request unless it is not aware of the requested change until the due process notice is received. In all other situations, the LEA must give the notice at the time of the proposed/refused action.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, only federally required provisions related to Prior Written Notice are included in the draft regulations.
Residency **(8 VAC 20-80-40)** o 1 comment from SSEAC indicated the need to clarify the responsible LEA for IEP development and services for residents of group homes, including an emphasis on the continuation and non-interruption of FAPE when a child has moved to a group home and who bears responsibility in each type of situation (court placed, school placed, parentally placed).	➢ The Board revised the residency section in order to clarify the responsible LEA for children who are residents of group homes.
Termination of Services **(8 VAC 20-80-58)** o 1 comment from PEATC suggested clarifying that if a student drops out or is expelled, parents (or student age 18+) will receive notice of the right to an evaluation and special education services at the parent's (or student's age 18+) request.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are

	subject, the Board of Education included only those provisions pertaining to termination of services required by federal regulations.
Terminology Change o 1 comment from the Virginia Coalition suggested replacing the term "general curriculum" with "general education curriculum," thus reflecting that this is the same curriculum used with students without disabilities.	➢ The Board defined the term "general curriculum" in the draft regulations so as to clarify that general curriculum means the same curriculum for students without disabilities.
***Timeline - IEP Development* (8 VAC 20-80-62 B. 2. b.)** o 1 comment from an LEA representative indicated that the timeline for IEP development should remain separate from the eligibility timeline and that 30 days from eligibility determination is reasonable.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education limited, where appropriate, those provisions pertaining to timelines to only those required by federal regulations.
***Timeline -- Initiate Reevaluation* (8 VAC 20-80-54 H.2.)** o 1 comment from the Virginia Coalition suggested maintaining the current requirement to initiate a reevaluation no less than 65 business days prior to the third anniversary of the date eligibility was last determined.	➢ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education deleted the timeline pertaining to reevaluations with the requirement that it be completed within 3 years.

Regulations Governing

SPECIAL EDUCATION

PROGRAMS FOR CHILDREN

WITH DISABILITIES

in Virginia

Effective

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FOREWORD

The reauthorization of the Individuals with Disabilities Education Improvement Act, December 3, 2004, (IDEA '04) and its implementing federal regulations, October 13, 2006, prompted the need to revise Virginia's special education regulations. Input was received from a Stakeholders Group that included school personnel, parents, consumers, professionals, and members of the State Special Education Advisory Committee. The Virginia Department of Education adhered to the requirements of Virginia's Administrative Process Act in the development and review of these regulations.

The Virginia Department of Education also relied on the federal regulations, at 34 CFR § 300.199 (a) and (b) for additional guidance in the formulation of these regulations. Under this federal mandate, each state shall:

1) Ensure that any State rules, regulations, and policies relating to the IDEA '04 conform to the requirements of the federal statute and regulations;

2) Identify in writing to local educational agencies located in the State and the Secretary of Education any such rule, regulation, or policy as a State-imposed requirement that is not required by the federal statute and regulations; and

3) Minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under the federal statute and regulations.

This federal regulation also requires that State rules, regulations, and policies under the

IDEA '04 shall support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards.

The regulations were adopted by the Board of Education on (insert date) and became effective on (insert date). The regulations include reference to the federal regulations, state statute, or state regulations that serve as the source of the requirements. These references are found in the right margin.

The Department of Education staff members are grateful to those persons who provided comment.

Copies of these regulations, including Braille copies, audio tapes, and large print versions are available at no cost from the Virginia Department of Education. Please forward your request to the Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23218-2120, or by calling 1-800-229-3820. Copies of these regulations are also available on the Virginia Department of Education's Web site at: www.doe.virginia.gov/VDOE/dueproc

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PREAMBLE

The Virginia Constitution delineates the General Assembly's responsibility for education: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth …" (Article VIII, section 1). The *Code of Virginia* delineates the Commonwealth's responsibility for education of children with disabilities, as follows:

"The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities …" (§ 22.1-214);

" 'Children with disabilities' means those persons who are aged two to twenty-one, inclusive … are disabled as defined by the Board of Education, and … need special education" (§ 22.1-213);

"Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system" (§ 22.1-7); and

"Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with the regulations of the Board of Education" (§ 22.1-215).

These regulations set forth the requirements of the Board of Education regarding the provision of special education and related services to children with disabilities in the

Commonwealth, reflecting both state and federal requirements. The regulations are applicable to all local school divisions, state-operated programs, the Virginia School for the Deaf and the Blind at Staunton, and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton, and private schools in the Commonwealth that provide special education and related services to children with disabilities.

In addition to these requirements, the following statutes and regulations are applicable to children with disabilities: all regulations promulgated by the Board of Education, provisions of the *Code of Virginia* (COV), the requirements of section 504 of the Rehabilitation Act of 1973 (as amended), the Americans with Disabilities Act, the Education Department General Administrative Rules (for federal grant requirements), the Virginians with Disabilities Act, and the No Child Left Behind Act of 2001.

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PART I.

DEFINITIONS.

8 VAC 20-81-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, §1400 et seq.

34 CFR § 300.4

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year.

COV § 22.1-213; 34 CFR §§ 300.101(a), 300.102(a)(3)(i)

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent(s) of a student with a disability transfer to the student. In

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Virginia, the age of majority is 18.

COV § 1-204; 34 CFR § 300.520

"Alternate assessment" means the state assessment program for measuring student performance against alternate achievement standards for students with significant cognitive disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

34 CFR §§ 300.320(a)(2)(ii); 300.704(b)(4)(x)

“Alternative assessment” means the state assessment program for measuring student performance on grade level standards for students with disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

34 CFR § 300.5

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The

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term includes:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

34 CFR § 300.6

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent(s) as part of the regular education program.

34 CFR § 300.39(b)(1)

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"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes:

1. Identification of children with hearing loss;
2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

Regulations Governing the Practice of Audiology and Speech-Language Pathology (18 VAC 30-20-10 et seq.*)*; 34 CFR § 300.34(c)(1)

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an

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emotional disturbance. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied.

34 CFR § 300.8(c)(1)

“Behavioral intervention plan” means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8 VAC 20-80-66 B.4.a.).

34 CFR § 300.11

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday.

34 CFR § 300.11

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"Career and technical education" means organized educational activities that offer a sequence of courses that:

1. provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors,
2. may include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph,
3. provides, at the postsecondary level, for a one year certificate, an associate degree, or industry-recognized credential and includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupational-specific skills.

20 USC § 2301 *et seq.*

"Caseload" means the number of students served by special education personnel.

"Change in identification" means a change in the categorical determination of the child's disability by the group that determines eligibility.

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational

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environment to which the child was previously assigned and includes:

1. The child's initial placement from general education to special education and related services;
2. The expulsion or long-term removal of a student with a disability;
3. The placement change which results from a change in the identification of a disability;
4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;
5. Termination of all special education and related services; or
6. Graduation with a standard or advanced studies high school diploma.

34 CFR §§ 300.102(a)(3)(iii), 300.532(b)(2)(ii), 300.536

"Change in placement" or “change of placement,” for the purposes of discipline, means:

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:
    a. The length of each removal;
    b. The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals;

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c. The total amount of time the student is removed; or

d. The proximity of the removals to one another.

34 CFR § 300.536

“Chapter” means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia.

COV §§ 22.1-212.5; 22.1-212.15; 34 CFR § 300.7

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the

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child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability.

COV § 22.1-213; 34 CFR §§ 300.8 (a)(1) & 300.8(a)(2)(i) & (ii)

"Cognitive disability" – see "Mental retardation."

"Collaboration" means interaction among professionals as they work toward a common goal. Teachers do not necessarily have to engage in co-teaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent(s) of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education.

34 CFR § 300.151

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-

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Risk Youth and Families that establishes the collaborative administration and funding system that addresses and funds services for certain at-risk youths and their families.

COV §§ 2.2-5200 et seq.

"Consent" means:

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s') or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.
4. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).
5. The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter

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and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

34 CFR § 300.9

“Controlled substance” means a drug or other substance identified under schedules I, II, or III, IV, or V in section 202(c) of the Controlled Substances Act, 21 USC 812(c).

34 CFR § 300.530(i)(1)(c)

“Core Academic Subjects” means English, reading or language arts, mathematics, science, foreign languages, civics, and government, economics, arts, history, and geography.

34 CFR § 300.10

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail.

COV § 16.1-228; § 53.1-1

“Co-teaching” means a service delivery option with two or more professionals sharing responsibility for a group of students for some or all of the school day in order to combine their expertise to meet student needs.

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"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

34 CFR § 300.34(c)(2); Licensure Regulations for School Personnel (8 VAC 20-21-10)

“Dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

18 USC § 930(g)(2)

"Day" means calendar day unless otherwise indicated as business day or school day.

34 CFR § 300.11

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance.

34 CFR § 300.8(c)(3)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education

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programs solely for children with deafness or children with blindness.

34 CFR § 300.8(c)(2)

“Destruction of information” means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

34 CFR § 300.611(a)

"Developmental delay" means a disability affecting a child ages two by September 30 through five inclusive:

1. Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; or
2. Who has an established physical or mental condition which has a high probability of resulting in developmental delay; and
3. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage; or limited English proficiency; and
4. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

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34 CFR § 300.8(b)

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements.

34 CFR § 300.175

"Due process hearing" means an administrative procedure conducted by an impartial Special Education Hearing Officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent(s) and a local educational agency. A due process hearing involves the appointment of an impartial Special Education Hearing Officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability.

34 CFR § 300.507(a)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

34 CFR § 300.34(c)(3)

“Education record” means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the

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agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act.

20 USC § 1232g(a)(3); COV § 22.1-289; 34 CFR § 300.611(b)

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child.

34 CFR § 300.327

"Educational service agencies and other public institutions or agencies" include:

1. Regional public multi-service agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;
2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;
3. Any other public institution or agency having administrative control and direction

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over a public elementary school or secondary school; and

4. Entities that meet the definition of intermediate educational unit in section 1402(23) of the Act as in effect prior to June 4, 1997.

34 CFR § 300.12

“Eligible student” means a child with a disability who reaches the age of majority and to whom the procedural safeguards and other rights afforded to the parent(s) are transferred.

"Emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

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34 CFR § 300.8(c)(4)

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials.

34 CFR § 300.14

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

34 CFR § 300.15

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting

1. Amounts received
    a. Under Part B of the Act;

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b. Under Part A of Title I of the ESEA; and

c. Under Parts A and B of Title III of the ESEA and;

2. Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service.

34 CFR § 300.16

"Extended school year services" for the purposes of this chapter means special education and related services that:

1. Are provided to a child with a disability:

   a. Beyond the normal school year of the local educational agency;

   b. In accordance with the child's individualized education program;

   c. At no cost to the parent(s) of the child; and

2. Meet the standards established by the Virginia Department of Education.

34 CFR § 300.106(b)

“Federal core academic subjects” means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography.

20 USC § 7801(11)

"Federal financial assistance" means any grant, loan, contract or any other arrangement

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by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.

34 CFR § 104.3(h)

"Free appropriate public education" (FAPE) means special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include preschool, elementary school, middle school or secondary school education in Virginia; and
4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

34 CFR § 300.17

“Functional behavioral assessment” means a process to determine the underlying cause or functions of a child’s behavior that impede the learning of the child with a disability or the learning of the child’s peers. A functional behavioral assessment may be a review of existing data.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency

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or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

34 CFR § 300.8(c)(5)

“Highly qualified special education teacher” means a teacher has met the requirements as specified in 34 CFR § 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment.

34 CFR § 300.18

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are

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confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services.

Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-180)

"Home instruction" means instruction of a child or children by a parent(s), guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling.

COV § 22.1-254.1

“Homeless children” has the meaning given the term homeless children and youth in section 725 (42 USC 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC 11431 et seq. and listed below:

The term homeless children and youth means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of section 103(a)(1) and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate

accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of section 103(a)(2)(C);
3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings,
4. Migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in subdivisions 1. through 3. above.

The term unaccompanied youth includes a youth not in the physical custody of a parent or guardian.

34 CFR § 300.19

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia.

COV §22.1-254

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“Illegal drug” means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC 812(c), or under any other provision of Federal law.

34 CFR § 300.530(i)(2)

"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question.

34 CFR § 300.502 (a)(3)(i)

"Individualized education program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child’s educational needs.

34 CFR § 300.22

“Individualized education program team” means a group of individuals described in 8 VAC 20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

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34 CFR § 300.23

"Individualized family service plan" (IFSP) under Part C of the Act means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family.

34 CFR § 303.24

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who:

1. Has delayed functioning;
2. Manifests atypical development or behavior;
3. Has behavioral disorders that interfere with acquisition of developmental skills; or
4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

COV § 22.1-213; 34 CFR § 300.25

"Informed parental consent": see "Consent."

"Initial placement" means the first placement for the child to receive special education and related services in either a local educational agency, other educational service agency, or other public agency or institution for the purpose of providing special

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education or related services.

“Intellectual disability” - see “Mental retardation.”

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8 VAC 20-81-40 and includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell.

Regulations Governing Interpreter Services for the Deaf and Hard of Hearing (22 VAC 20-30-10 et seq.); 34 CFR § 300.34(c)(4)(i)

“Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 CFR §§ 300.114 through 300.120

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"Level I services" means the provision of special education to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Level II services" means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual:

1. who is aged 2 through 21;
2. who is enrolled or preparing to enroll in an elementary school or secondary school;
3. who:
    a. was not born in the United States or whose native language is a language other than English;
    b. is a Native American or Alaska Native; or a native resident of the outlying areas; and

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c. comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

d. is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

4. whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:

a. the ability to meet Virginia's proficient level of achievement on Virginia's assessments;

b. the ability to successfully achieve in classrooms where the language of instruction is English; or

c. the opportunity to participate fully in society.

20 USC § 7801(25); 34 CFR § 300.27

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (the Virginia schools). Neither state-operated programs nor the Virginia schools are considered a school division as that term is used in these regulations.

COV § 22.1-346(C); 34 CFR § 300.28

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"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services.

COV § 22.1-270; 34 CFR § 300.34(c)(5)

"Mental retardation" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

34 CFR § 300.8(c)(6)

"Multiple disabilities" means simultaneous impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

34 CFR § 300.8(c)(7)

"National Instructional Materials Access Center" (NIMAC) means the national center established to do the following:

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1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the U.S. Secretary of Education, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies;
2. Provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe; and
3. Develop, adopt and publish procedures to protect against copyright infringement, with respect to print instructional materials provided in accordance with the Act.

20 USC § 1474(e)(1) & (e)(2)

“National Instructional Materials Accessibility Standard” (NIMAS) means the standard to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats.

20 USC § 1474(e)(3)(B)

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent(s) of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or

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for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

34 CFR § 300.29

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

34 CFR § 300.107(b)

"Notice" means written statements in English or in the primary language of the home of the parent(s), or, if the language or other mode of communication of the parent(s) is not a written language, oral communication in the primary language of the home of the parent(s). If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication).

34 CFR § 300.503(c)

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational

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therapist and includes:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
3. Preventing, through early intervention, initial or further impairment or loss of function.

Regulations Governing the Licensure of Occupational Therapists (18 VAC 85-80-10 et seq.); 34 CFR § 300.34(c)(6)

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate:

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

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3. To understand and use remaining vision and distance low vision aids; and
4. Other concepts, techniques, and tools.

34 CFR § 300.34(c)(7)

"Orthopedic impairment" means a severe orthopedic impairment. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

34 CFR § 300.8(c)(8)

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome.

34 CFR § 300.8(c)(9)

"Paraprofessional" or paraeducator means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

34 CFR § 300.156(b)(2)(iii)

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"Parent" means

1. Persons who meet the definition of “parent”:

   a. a biological or adoptive parent of a child,

   b. a foster parent:

      i. if the biological parent(s)’ authority to make educational decisions on the child’s behalf has been extinguished under §§ 16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia or a comparable law in another state;

      ii. the child is in permanent foster care pursuant to § 63.2-900 et seq. of the Code of Virginia or comparable law in another state; and

      iii. the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of the parent under this chapter, and has no interest that would conflict with the interests of the child.

   c. a guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not a Guardian ad litem, or the State if the child is a ward of the State);

   d. an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

   e. a surrogate parent who has been appointed in accordance with requirements detailed under 8 VAC 20-81-220 of this chapter.

2. If a judicial decree or order identifies a specific person(s) under subdivision 1. a.

through 1. e. of this subsection to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person(s) shall be determined to be the “parent” for purposes of this definition.

3. “Parent” does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.

4. The biological or adoptive parent, when attempting to act as the parent under this part and when more than one party if qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.

5. Non-custodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child’s records.

6. Custodial step-parents have the right to access the child’s record. Non-custodial step-parents do not have the right to access the child’s record.

COV § 20-124.6; 34 CFR § 99.4; 34 CFR § 300.30

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the

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implementation of their child's IEP or IFSP.

34 CFR § 300.34(c)(8)

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act.

34 CFR §§ 300.611(c); 300.324(c); 300.321(b)(3)

“Personally identifiable” means information that contains the following:

1. The name of the child, the child’s parent, or other family member,
2. The address of the child,
3. A personal identifier, such as the child’s social security number or student number, or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

34 CFR § 300.32

"Physical education" means the development of:

1. Physical and motor fitness;

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2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education, and motor development.

34 CFR § 300.39(b)(2)

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction.

Regulations Governing the Practice of Physical Therapy (18 VAC 112-20-10 et seq.); 34 CFR § 300.34(c)(9)

"Private school children with disabilities" means children with disabilities enrolled by their parent(s) in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8 VAC 20-81-150.

34 CFR § 300.130

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by

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a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including:

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
6. Assisting in developing positive behavioral intervention strategies.

34 CFR § 300.34(c)(10)

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent(s).

34 CFR § 300.502(a)(3)(ii)

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"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods which are likely to succeed in providing information to the public.

“Qualified person who has a disability” means a “qualified handicapped person” as defined in the federal regulations implementing the Rehabilitation Act of 1973 , as amended.

29 USC § 701 et seq.

"Recreation" includes:

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and
4. Leisure education.

34 CFR § 30.34(c)(11)

"Reevaluation" means completion of a new evaluation in accordance with this chapter.

34 CFR § 300.303

"Rehabilitation counseling services" means services provided by qualified personnel in

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individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended.

34 CFR § 300.34(c)(12)

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child

with a disability to benefit from special education.

Nothing in this section:

1. limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE,
2. limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school, or
3. prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

COV § 22.1-213; 34 CFR § 300.34(a) & (b)

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities.

34 CFR § 300.11

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school

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nurse or other qualified person.

COV §§ 54.1-3000 et seq.; 34 CFR § 300.34(c)(13)

"Scientifically-based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that:

1. employs systematic, empirical methods that draw on observation or experiment,
2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn,
3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific

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review.

20 USC § 9501(18); 34 CFR § 300.35

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance.

29 USC § 701 et seq.

“Serious bodily injury” means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

18 USC § 1365(h)(3); 34 CFR § 300.530(i)(3)

“Services plan” means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8 VAC 20-81-150 of this chapter.

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34 CFR § 300.37

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including:

1. Preparing a social or developmental history on a child with a disability;
2. Group and individual counseling with the child and family;
3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
5. Assisting in developing positive behavioral intervention strategies for the child.

Licensure Regulations for School Personnel (8 VAC 20-21-630 et seq.); 34 CFR § 300.34(c)(14)

"Special education" means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education:

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;

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2. Vocational education; and
3. Travel training.

COV § 22.1-213; 34 CFR § 300.39

“Special Education Hearing Officer” has the same meaning as the term “hearing officer” as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

1. To address the unique needs of the child that result from the child's disability; and
2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

34 CFR § 300.39(b)(3)

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the

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result of visual, hearing, or motor disabilities; of mental retardation; of environmental, cultural, or economic disadvantage.

1. Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

COV § 22.1-213; 34 CFR § 300.8(c)(10)

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance.

34 CFR § 300.8(c)(11)

"Speech-language pathology services" means the following:

1. Identification of children with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation

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of speech or language impairments;

4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

34 CFR § 300.34(c)(15)

“State assessment program” means the state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education.

34 CFR § 300.41

"State-operated programs" means programs which provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions.

COV §§ 22.1-7; 22.1-340; 22.1-345

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the

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maximum extent appropriate in accordance with this chapter.

34 CFR § 300.42

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education.

34 CFR § 300.519

“Timely manner” if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to:

1. Early childhood special education to the extent that those services are appropriate; or
2. Other services that may be available, if appropriate.

34 CFR § 300.124

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"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process, that

1. is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
2. is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

34 CFR § 300.43

"Transportation" includes:

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if

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required to provide special transportation for a child with a disability.

34 CFR § 300.34(c)(16)

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

34 CFR § 300.8(c)(12)

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

1. Develop an awareness of the environment in which they live; and
2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

34 CFR § 300.39(b)(4)

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"Universal design" has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.

34 CFR § 300.44

"Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton" or "Virginia schools" means the Virginia schools under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of the Virginia schools.

COV § 22.1-346

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

CFR § 300.8(c)(13)

"Vocational education," for the purposes of special education, means organized

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educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education.

34 CFR § 300.39(b)(5)

"Ward of the State" means a child who, as determined by the state where the child resides is:

1. a foster child;
2. a ward of the state; or
3. in the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets the definition of a "parent".

34 CFR § 300.45

"Weapon" means dangerous weapon under paragraph (2) of the first subsection (g) of 18 USC § 930.

34 CFR § 530(i)(4)

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PART II.

RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION.

8 VAC 20-81-20. Functions of the Virginia Department of Education.

The Virginia Department of Education (state educational agency) shall perform the following functions:

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to, children with disabilities who:
   a. Are migrant;
   b. Are homeless;
   c. Have been suspended or expelled from school, in accordance with this chapter;
   d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8 VAC 20-81-110 I;
   e. Are in special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;
   f. Are in state-operated programs; or
   g. Are in public charter schools in accordance with the Code of Virginia.

34 CFR §§ 300.2; 300.101

2. Except as provided in 8 VAC 20-81-80 F., ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private

school by a local school division or Comprehensive Services Act team.

34 CFR § 300.112

3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities.

COV § 22.1-215; 34 CFR § 300.200

4. Ensure that each local educational agency includes all children with disabilities in all general Virginia Department of Education and division-wide assessment programs, including assessments described in section 1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at section 1412.

20 USC § 1412(a)(16)(A)

5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education.

34 CFR § 300.110

6. Ensure that each educational program for children with disabilities administered within Virginia:

a. is under the general supervision of the persons responsible for educational

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programs for children with disabilities in Virginia; and

b. meets the educational standards of the Virginia Department of Education.

In carrying out these requirements with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.) are met.

34 CFR § 300.149(a)

7. Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met.

34 CFR § 300.165

8. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities.

COV § 22.1-214; 34 CFR §§ 300.199 & 300.129

9. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to LRE requirements by :

a. ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements, and

b. providing them with technical assistance and training necessary to assist them in this effort.

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34 CFR § 300.119

10. Ensure that the requirements for LRE are implemented by each local educational agency. If there is evidence that a local educational agency's placements are inconsistent with LRE requirements, the Virginia Department of Education shall:

a. review the local educational agency's justification for its actions; and

b. assist in planning and implementing any necessary corrective action.

34 CFR § 300.120

11. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed.

a. Administer a special education due process hearing system that provides procedures for training of Special Education Hearing Officers, processing requests for a hearing, appointment of Special Education Hearing Officers, management and monitoring of hearings, and administration of the hearing system.

b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding alleged violations of the educational rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.

34 CFR §§ 300.149(b), 300.151, & 300.507

12. Establish and implement a mediation process in accordance with the Act.

COV § 22.1-214; 34 CFR § 300.506

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13. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure that each child with a disability placed in the school by a local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies.

a. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires:

b. Provide copies of all Virginia regulations and standards; and

c. Provide an opportunity for these schools to participate in the development and revision of Virginia's regulations that apply to them.

34 CFR §§ 300.129; 300.146; 300.147

14. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies.

34 CFR § 300.149

15. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities.

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a. Membership. The membership shall consist of individuals appointed by the Superintendent of Public Instruction or designee who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities (ages birth through 26). Membership shall include one or more of the following:

(1) Parents of children with disabilities (ages birth through 26);

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Act (42 USC § 11431 et seq.);

(6) Administrators of programs for children with disabilities;

(7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(10) A representative from Virginia’s juvenile and adult corrections agencies; and

(11) A representative from Virginia's child welfare agency responsible for foster

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care.

b. Duties. The state special education advisory committee shall:

(1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;

(3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Act;

(4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;

(5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and

(6) Review the Annual Plan submitted in accordance with 8 VAC 20-81-230. B.2. submitted by state-operated programs, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

c. Procedures.

(1) The state special education advisory committee shall meet as often as necessary to conduct its business.

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(2) By October 1 of each year, the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report shall be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.

(4) All meetings and agenda items shall be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings shall be open to the public.

(5) Interpreters and other necessary accommodations shall be provided for advisory committee members or participants.

(6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.

34 CFR §§ 300.167 through 300.169

16. Provide a report annually to the state special education advisory committee on the Virginia Department of Education's dispute resolution systems, including information related to due process hearings and decisions. This report and due process hearing decisions, with all personally identifiable information deleted, are made available to the public on the Virginia Department of Education's Web site.

34 CFR § 300.513(d)

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17. Establish goals for the performance of children with disabilities that:

a. promote the purposes of the Act;

b. are the same as Virginia's objectives for progress by children in its definition of adequate yearly progress, including Virginia's objectives for progress by children with disabilities, under § 1111(b)(2)(C) of the ESEA, 20 UCS § 6311;

c. address graduation rates and drop out rates, as well as such other factors as Virginia may determine; and

d. are consistent, to the maximum extent appropriate, with any other goals and academic standards for children as established by Virginia.

34 CFR § 300.157(a)

18. Establish performance indicators Virginia will use to assess progress toward achieving the goals in subsection 17 of this section, including measurable annual objectives for progress by children with disabilities under § 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC § 6311.

Annually report to the public and the United States Secretary of Education on the progress of children with disabilities in Virginia, toward meeting the goals described in subsection 17 of this section, which may include elements of the reports required under § 1111(h) of the ESEA.

34 CFR § 300.157(b) and (c)

19. Establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve

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children with disabilities. These requirements include:

a. related services personnel and paraprofessionals. The qualifications shall:

(1) be consistent with any Virginia-approved or Virginia-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(a) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services to children with disabilities.

b. ensuring that each person employed as a public school special education teacher in Virginia who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in § 1119(a)(2) of the ESEA.

c. requiring local educational agencies to take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

34 CFR § 300.156(a) through (d)

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20. Respond to complaints filed by a parent about staff qualifications as provided for under this chapter. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or local educational agency employee to be highly qualified.

34 CFR § 300.156(e)

21. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic educational agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings.

34 CFR § 300.154

22. Disburse the appropriated funds for the education of children with disabilities in Virginia to local school divisions and state-operated programs which are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities.

34 CFR §§ 300.705; 300.816

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23. Ensure that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving needed special education and related services. Report and certify annually to the United States Department of Education the number of children with disabilities in local educational agencies who are receiving special education and related services on any date between October 1 and December 1 of each year. The annual report of children served shall meet the provisions of 34 CFR §§ 300.641 – 645.

34 CFR §§ 300.111, 300.640

24. Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in the local educational agencies. This method shall include the collection and examination of data with respect to:

a. The identification of children as children with disabilities, including the identification of a particular impairment described in 8 VAC 20-81-10, "Child with a disability;"
b. The placement in particular educational settings of these children; and
c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 34 CFR §§ 300.646(a), 300.173

25. Ensure that in the determination of significant disproportionality, the Virginia Department of Education:

a. reviews and, if appropriate, revises the policies, procedures, and practices used

by the local educational agency in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of this chapter;

b. requires any local educational agency determined to have a significant disproportionality to reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly, but not exclusively, children in those groups that were significantly over-identified; and

c. requires the local educational agency to publicly report on the revision of policies, practices, and procedures addressing the disproportionality.

34 CFR § 300.646(b)

26. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures.

a. Ensure that each local educational agency is informed of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that local educational agency.

34 CFR §§ 300.121, 300.150

27. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met.

34 CFR § 300.154(d)

28. Ensure that if the Virginia Department of Education provides direct services to children with disabilities, it complies with state and federal requirements as if it is a

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local educational agency and uses federal funds under Part B of the Act to provide services.

a. The Virginia Department of Education shall use payments that would otherwise have been available to a local educational agency to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of § 1413(h) of the Act.

b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.

34 CFR § 300.175

29. Ensure that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures, as follows:

a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, IEPs are developed and implemented for those children; and

b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.

34 CFR § 300.124

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30. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of information, as specified in 34 CFR § 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR §§ 300.612 through 300.626.

34 CFR §§ 300.123, 300.610

31. Ensure that a practical method is developed and implemented to:

a. examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions with children with disabilities:

(1) among local educational agencies in Virginia; or

(2) compared to the rates for nondisabled children within the local school division.

b. review discrepancies and, if appropriate, require the local educational agency to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

34 CFR § 300.170

32. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print

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disabilities.

a. Ensure that local educational agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials;

b. In carrying out the provisions of this subsection, to the maximum extent possible, work collaboratively with the state agency responsible for assistive technology programs.

34 CFR § 300.172

33. Prohibit the Virginia Department of Education and local educational agency personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 USC § 812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter.

34 CFR § 300.174(a)

34. Monitor, enforce, and provide technical assistance regarding the implementation of the requirements under the Act. These actions include:

a. providing the Secretary of Education state performance reports and data collections in accordance with the provisions of 34 CFR §§ 300.600 through 300.602.

b. taking appropriate enforcement and technical assistance measures to assist local educational agencies in complying with the provisions of the Act in accordance

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with the provisions of 34 CFR §§ 300.600 through 300.602 and 300.608.

c. establishing that the focus of Virginia's monitoring activities are on:

(1) improving educational results and functional outcomes for all children with disabilities; and

(2) ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

d. using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in 34 CFR § 300.600(d), and the indicators established by the U.S. Secretary of Education for the State performance plans.

e. using the targets established in Virginia's performance plan and the priority areas described in 34 CFR § 300.600(d) to analyze the performance of each local educational agency.

f. following all the reporting requirements under 34 CFR § 300.602(b).

g. notifying the public of the pendency of an enforcement action taken by the U.S. Department of Education pursuant to 34 CFR § 300.604.

h. prohibiting the local educational agency from reducing the local educational agency's maintenance of effort under 34 CFR § 300.203 for any fiscal year if the Virginia Department of Education determines that a local educational agency is not meeting the requirements of Part B of the Act, including the targets in Virginia's state performance plan.

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34 CFR §§ 300.600 through 300.645; 300.149(b); 300.165(b)

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PART III.

RESPONSIBILITIES OF LOCAL SCHOOL DIVISIONS

AND STATE-OPERATED PROGRAMS.

8 VAC 20-81-30. Responsibility of local school divisions and state-operated programs.

A. The requirements set forth in this chapter are applicable to local school divisions and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with disabilities, aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education.

The children include:

1. Children with disabilities who are migrant;
2. Children with disabilities who are homeless;
3. Children with disabilities who are in need of special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade;
4. Children with disabilities who are served in a public nonprofit charter school;
5. Children with disabilities who have been suspended or expelled from school;
6. Children with disabilities who are incarcerated for 10 or more days in a regional

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or local jail in its jurisdiction; with the exception of those additional provisions identified in 8 VAC 20-81-110 I;

7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction;
8. Children with disabilities who are in foster care and residents of Virginia;
9. Children with disabilities who are placed for non-educational reasons;
10. Children with disabilities regardless of citizenship or immigration status.

COV § 22.1-214; 34 CFR §§ 300.2, 300.101, 300.124, 300.209

C. Every child with a disability is deemed to reside in a school division when:

1. the child is living with a biological parent whose parental rights have not been terminated.
2. the child is living with an adoptive parent.
3. the child is living with an individual
   a. other than the custodial parent but who is defined as a parent in the Code of Virginia, § 22.1-1, not solely for school purposes, and
   b. pursuant to a Special Power of Attorney executed under Title 10, USC §1044b, by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.
4. the parent(s) of the child is deceased and the child is living with a person *in loco parentis* who resides within the school division.
5. the parents of the child are unable to care for him and he is living, not solely for

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school purposes, with another person who resides in the school division and is either:

a. the court-appointed guardian, or has legal custody, or

b. acting *in loco parentis* pursuant to placement of the child by a person or entity authorized to do so under COV § 63.2-900.

6. the child is living in the school division not solely for school purposes, as an emancipated minor pursuant to the provisions of the COV § 16.1-334.

7. the child is in foster care and a resident of Virginia, but not a resident of the school division, under the following conditions:

a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or

b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.1 of the Code of Virginia that is located within the geographical boundaries of the school division.

COV § 22.1-215

8. the child is in foster care and a resident of Virginia, and a resident of the school division, under the provisions of subdivision 7. of this subsection.

D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a

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free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child.

34 CFR § 300.101

E. Requirements for children with disabilities who are placed for noneducational reasons:

1. The local school division that is part of the Comprehensive Services Act team that places the child in a private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.
2. If a child in foster care is placed in a local school division of nonresidence and the IEP team of the local school division of nonresidence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the Virginia placing agency is located and is a participant in the Community Policy and Management Team of that local school division that has responsibility for the child under the Comprehensive Services Act (COV § 2.2-5200 et seq.).
3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides, unless the child is in a state-operated program.

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4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides, unless the child is in a state-operated program.
5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child with a disability is in a state-operated program.
6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program.
7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the

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adult child intends to stay. No adult child shall have more than one residence at a time.

8. If the child is aged 18 or older, who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.

F. If there is a dispute between local school divisions regarding the parent's or legal guardian's residence, the local school division of the parent's or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's or legal guardian's residence is established in another local school division.

G. If there is dispute between the parent or legal guardian of a child with a disability and the local school division regarding residency, the local school division of where the child is last enrolled remains responsible for providing the child with a free appropriate public education until resolution of the dispute.

H. Each state-operated program shall ensure that children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education.

COV § 22.1-7

I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a

school division may, in the discretion of the local school board's policies and procedures, be admitted to the public schools of the school division for special education and related services. Tuition charges associated with this admittance are subject to the provisions of the Code of Virginia, § 22.1-5.

8 VAC 20-81-40. Special education staffing requirements.

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (COV § 22.1.253.13:2) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-240).

1. Staffing shall be in accordance with Appendix A in the following settings.

a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.

b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities.

2. Personnel assignment.

a. Each student shall receive special education services from special education

personnel assigned in accordance with *The Virginia Licensure Regulations for School Personnel.*

b. Special education teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified.

c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.

d. Special education services include those services provided directly to the student and those provided indirectly.

3. Caseload standards.

a. The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds, are listed in Appendix A of this chapter (Virginia Appropriation Act). Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

(1) A building average is computed by dividing the total weights (found in Appendix A) for all children served in this fashion by the number of special

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education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3.d. of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

(2) The building average shall not exceed 20 points if services are provided to students receiving level I services and to children receiving level II services. The building average shall not exceed 24 points if services are provided only to children receiving level I services.

(3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels.

c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.

d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act shall be made in proportion to the percentage of school time on such assignment.

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(1) This provision does not apply when special education and related services are provided in a general education class, based on the goals of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.

(2) When special education personnel provide services in a general education classroom based on the IEP goals of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

B. Staffing for early childhood special education.

1 Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program (IEP) team. A schedule comparable in length to school age students shall be made available if determined appropriate by the IEP team.

2. Staffing requirements.

a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.

b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel.

c. The maximum special education caseloads, with and without

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paraprofessionals, are set and funded in the Virginia Appropriation Act. See Appendix A for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

C. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan.

School divisions and private special education schools may offer for consideration of approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant approval for alternative staffing levels upon request from local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services are as follows:

a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, or a passing score on the Educational Interpreter Performance Assessment

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(EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state or national certification (National Interpreter Certification) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.

b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/language or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).

c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics and hold a national Oral Interpreter Credential (OIC).

8 VAC 20-81-50. Child find.

A. Child find.

1. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the

jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who:

a. Are highly mobile, such as migrant and homeless children;

b. Are wards of the state;

c. Attend private schools, including children who are home-instructed or home-tutored; and

d. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade.

34 CFR § 300.111

e. Are under age 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.

34 CFR §§ 300.102; 300.111

2. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.

34 CFR § 300.124

3. Each local school division shall locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools.

a. The child find process shall be designed to ensure:

(1) the equitable participation of parentally-placed private school children,

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and

(2) an accurate count of those children.

b. The local school division shall undertake activities similar to the activities undertaken for its public school children.

c. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR § 300.133.

d. The child find process shall be completed in a time period comparable to that for students attending public school in the LEA.

e. Each local school division in which private, including religious, elementary and secondary schools are located, shall include parentally-placed private school children, including those who reside in a state other than Virginia, or country other than the United States.

(1) If the location of the administration of the private school in which the child attends is different from the school division in which the private school is located, the school division in which the private school is located and which the child attends is responsible for the child find activities.

f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, on how to implement the child find and evaluation activities.

34 CFR §§ 300.131, 300.133, 300.134

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B. Public awareness.

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

a. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free appropriate public education and the availability of special education programs and services;

b. Generate referrals; and

c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

C. Screening.

1. Each local school division shall have procedures, including timelines, to document the screening of children enrolled in the division, including transfers from out of state as follows:

a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8 VAC 20-250-10.

COV § 22.1-273

b. Children shall be screened for scoliosis in accordance with the requirements of 8 VAC 20-690-20.

COV § 22.1-273.1

c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.

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d. Children who fail any of the above screenings may be rescreened if the original results are not considered valid.

e. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia.

COV § 22.1-270

f. Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.

2. The local school division shall provide all applicable procedural safeguards. These include the following:

a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;

b. Confidentiality; and

c. Maintenance of the student's scholastic record.

3. Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

34 CFR § 300.302

D. Each school division shall have procedures to review records, assess whether the child was provided appropriate instruction, and review other performance evidence

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of the child referred through a screening process, or by school staff, the parent(s), or other individuals.

1. The local school division's procedures shall ensure that if a child received early intervening services and/or other scientific research-based interventions, these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such procedures shall include:

   a. tracking and reviewing timelines;

   b. instructions on maintaining data-based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and

   c. written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or development.

2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high-quality, research-based instruction in general education settings delivered by qualified personnel and data-based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.

34 CFR § 300.309(c)

E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability.

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1. The local school division's procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.
2. If the school division decides not to evaluate, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.

34 CFR § 300.507

F. Prohibition on mandatory medication.

1. The Virginia Department of Education prohibits State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under 34 CFR §§ 300.300 through 300.311, or receiving services under this part.
2. Teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

34 CFR § 300.174

8 VAC 20-81-60. Referral for initial evaluation.

A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who

are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals.

34 CFR § 300.301(b)

2. The referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.

B. Procedures for referral for initial evaluation.

1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the special education administrator, or designee, shall:

a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;

b. Implement procedures for maintaining the confidentiality of all data; and

c. Provide written notice and procedural safeguards to inform the parent(s) in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:

(1) The referral for evaluation,

(2) The purpose of the evaluation, and

(3) Parental rights with respect to evaluation and other procedural

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safeguards.

d. Inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child.

e. Secure informed consent from the parent(s) for the evaluation.

f. Ensure that all evaluations consist of procedures that:

(1) gather relevant functional, developmental and academic information about the child to determine if the child is a child with a disability, and

(2) are sufficiently comprehensive to identify all of the child's special education and related services needs, and educational needs.

g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the evaluation process. The time frame shall not apply to the local school division if:

(1) the parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or

(2) if the child enrolls in a school served by the local school division after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the local school division is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and the local school division where the child

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is enrolled in school agree to a specific time when the evaluation will be completed.

h. The parent and eligibility group may agree in writing to extend the 65 day timeline to obtain additional data that cannot be obtained within the 65 business days.

34 CFR §§ 300.300(a), 300.304

i. If the decision is to not evaluate, prior written notice, in accordance with 8 VAC 20-81-170, shall be given to the parent(s), including the parent's right to appeal the decision through due process hearing procedures.

34 CFR § 300.507

3. Parental consent requirements

a. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The local school division shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.

d. For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the local school division is not required to

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obtain parental consent to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with Virginia law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

The local school division shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

e. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child.

(1) The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

f. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a

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request to provide consent, the local school division may not use mediation or due process to pursue the initial evaluation.

34 CFR § 300.300

8 VAC 20-81-70. Evaluation and Reevaluation.

A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section.

34 CFR § 300.122

B. Determination of needed evaluation data for initial evaluation or reevaluation.

1. Review of existing evaluation data. A group that is comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate, shall:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parent(s) of the child;

(2) Current classroom-based, local, or state assessments and classroom-based observations;

(3) Observations by teachers and related services providers; and

b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine:

(1) Whether the child is, or continues to be, a child with a disability;

(2) The present educational needs of the child;

(3) The child’s present level of academic achievement and related

developmental needs; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance.
3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.
4. This process shall be considered the evaluation if no additional data are needed.
5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8 VAC 20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.

34 CFR §§ 300.305; 300.507

C. The local educational agency shall establish policies and procedures to ensure that

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the following requirements are met.

1. Tests and other evaluation materials used to assess a child under this chapter are selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Each assessment and other evaluation materials shall be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

3. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

4. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

5. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.

6. Any standardized tests that are given to a child:

a. Have been validated for the specific purpose for which they are used; and

b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.

7. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.

8. Any nonstandardized test, administered by qualified personnel, may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.

9. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

10. Tests are selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, motor, or communication skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).

11. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

12. Technically sound instruments are used that may assess the relative contribution

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of cognitive and behavioral factors, in addition to physical or developmental factors.

13. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.
14. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.
15. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
16. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.
    a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.

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b. A complete audiological assessment, including tests which will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.

COV § 22.1-214; 34 CFR §§ 300.304, 300.310

D. A written copy of the evaluation report shall be provided at no cost to the parent(s). The report shall be available to the parent(s) no later than two business days before the meeting to determine eligibility.

34 CFR § 300.306(a)(2)

E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 8 VAC 20-81-120, to ensure prompt completion of full evaluations.

34 CFR § 300.304(c)(5)

F. Reevaluation.

1. A reevaluation shall be conducted:

a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;

b. If the child's parent(s) or teacher requests a reevaluation; or

c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.

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34 CFR § 300.303(a) & (b)(2)

2. The local educational agency shall not conduct a reevaluation more than once a year, unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the parent(s) with prior written notice, in accordance with 8 VAC 20-81-170.

34 CFR § 300.303(b)(1)

3. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B. of this section, in determining:

a. whether the child continues to have a disability;

b. the child's educational needs, including the present levels of academic achievement and related developmental needs of the child;

c. whether the child continues to need special education and related services;

d. whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general education curriculum.

34 CFR § 300.305(a)

4. The local educational agency shall administer tests and other evaluation materials, in accordance with subsection B of this section, as may be needed to

produce the data identified in subdivision 3. of this subsection.

34 CFR § 300.305(c)

5. Requirements if additional data are not needed:

a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding:

(1) the determination and the reasons for it; and

(2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.

c. The child's parent(s) has the right to resolve the issue through the dispute resolution options of mediation or due process, as described in this chapter.

34 CFR § 300.305(d)

6. This process is considered the evaluation if no additional data are needed.

G. Parental Consent for Reevaluation

1. Informed parental consent is required before conducting any reevaluation of a child with a disability.

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a. If the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent(s) has failed to respond, the local educational agency shall proceed as if consent has been given by the parent(s). Reasonable measures include providing notice to the parent(s) in writing (or by telephone or in person with proper documentation).

b. If the parent(s) refuses consent, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures. The local educational agency does not violate its obligation under this chapter if it declines to pursue the reevaluation.

2. Parental consent is not required before:

a. Review of existing data as part of an evaluation or reevaluation;

b. A teacher's or related service provider's observations or ongoing classroom evaluations, or

c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

3. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation.

a. In this instance, the local school division is not required to consider the child

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as eligible for equitable services under the provisions of 8 VAC 20-81-150 for parentally-placed students.

34 CFR § 300.300(c) & (d)

H. Timelines for reevaluations.

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.
2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to the evaluation.
3. The parent and eligibility group may agree in writing to extend the 65 day timeline to obtain additional data that cannot be obtained within the 65 business days.

I. The LEA is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency is required to provide the parent with prior written notice in accordance with 8 VAC 20-81-170.

34 CFR § 300.305(e)(2)

8 VAC 20-81-80. Eligibility.

A. Each local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services and educational needs is made in accordance with the provisions of this section.

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B. The determination that a child is eligible for special education and related services shall be made on an individual basis by a group as designated in subdivision C.2. of this section.

C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed in accordance with the requirements of 8 VAC 20-81-110.

1. The determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:

   a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development,

   b. Interpret assessment and intervention data, and apply critical analysis to those data,

   c. Develop appropriate educational and transitional recommendations based on the assessment data,

2. The eligibility group composition.

   a. The group may be an IEP team, as defined in 8 VAC 20-81-110, as long as the above requirements and notice requirements of 8 VAC 20-81-170 are

met.

b. The group shall include, but not be limited to:

(1) Local educational agency personnel representing the disciplines providing assessments;

(2) The special education administrator or designee;

(3) The parent(s);

(4) A special education teacher;

(5) The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and

(6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.

34 CFR §§ 300.306, 300.308

D. Procedures for determining eligibility and educational need.

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:

a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background,

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and adaptive behavior;

b. Ensure that information from all these sources is documented and carefully considered.

2. The group shall provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.

3. Observation.

a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting, to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.

b. The local educational agency shall:

(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.

(2) Ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child

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was referred for an evaluation.

4. A child shall not be determined to be eligible under this chapter if the child does not otherwise meet the eligibility criteria, and the determinant factor is:

a. Lack of appropriate instruction in reading, including the essential components of reading instruction:

(1) phonemic awareness

(2) phonics

(3) vocabulary development

(4) reading fluency, including oral reading skills

(5) reading comprehension strategies

b. lack of appropriate instruction in math; or

c. limited English proficiency.

5. The documentation of the determination of eligibility shall include a statement of:

a. Whether the child has a specific disability.

b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.

c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.

d. The educationally relevant medical findings, if any.

e. The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented

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and whether the child does not achieve commensurate with the child's age. This document shall also include:

(1) The local educational agency's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected;

(2) The strategies that were used to increase the child's rate of learning; and

(3) The parent's right to request an evaluation.

f. For identification of learning disabilities, whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement or both relative to intellectual development in one or more of the areas listed in subsection K. of this section.

6. The eligibility group shall consider, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel. There shall be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.

7. The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion,

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then the group member shall submit a written statement presenting that member's conclusions.

8. The local educational agency shall obtain written parental consent for the initial eligibility determination. Thereafter, written parental consent shall be secured for any change in categorical identification in the child's disability.

9. The eligibility group shall have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. The written summary shall include any written statement from a member whose conclusion differs from the other member's determination. The summary statement may include other recommendations. The written summary shall be maintained in the child's scholastic record.

10. The written summary shall be forwarded to the IEP team, including the parent, upon determination of eligibility. The summary statement may include other recommendations.

11. With reevaluations, if the eligibility group determines that there is not a change to the child's eligibility for special education and related services, and educational needs, the IEP team is not required to convene, unless the parent requests that the IEP team meets.

34 CFR §§ 300.306 through 300.311

E. Nothing in this chapter requires that children be identified by their disability on IEPs, local educational agency communications to parents regarding eligibility determinations, or other similar communications to parents. For such

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communications, local educational agencies shall identify that each child has a disability under this chapter and by reason of that disability needs special education and related services, and is regarded as a child with a disability.

F. Eligibility for related services. A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team.

34 CFR § 300.34; 300.306(c)(2)

G. Two-year-old children, previously served by Part C. A child, aged two, previously participating in early intervention services assisted under Part C of the Act shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age 2, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child.

34 CFR § 300.124

H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for

this age group.

I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability.

34 CFR § 300.307

J. The Virginia Department of Education permits each local educational agency to use a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and permits each local educational agency to use other alternative research-based intervention and procedures.

34 CFR § 300.307

K. Eligibility of a child with a specific learning disability.

1.The group may determine that a child has a specific learning disability if:

a. The child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Virginia-approved grade-level standards:

(1) Oral expression;

(2) Listening comprehension;

(3) Written expression;

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(4) Basic reading skills;

(5) Reading fluency skills;

(6) Reading comprehension;

(7) Mathematical calculations; or

(8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision K.1.a. of this section when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8 VAC 20-81-70; and

c. The group determines that its findings under subsection K.1. a. and b. of this section are not primarily the result of:

a. A visual, hearing, or motor impairment;

b. Mental retardation;

c. Emotional disturbance;

d. Environmental, cultural, or economic disadvantage, or

e. Limited English Proficiency.

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2. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of environmental, cultural, or economic disadvantage. A specific learning disability:

a. is not the result of a lack of appropriate instruction in reading or math;

b. data demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

c. data-based documentation reflecting student progress was collected.

34 CFR §§ 300.307; 300.311

L. Eligibility as a child with autism.

1. Any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references, such as the *Diagnostic and Statistical Manual of Mental Disorders (DSM),* may be included under the eligibility category of autism. Students with autism demonstrate restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms (i.e., hand or finger flapping or twisting, or

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complex whole-body movements), persistent preoccupation with parts of objects.

2. A minimum of six characteristics from the following communication and social interaction areas shall be present to be considered for eligibility.

a. One or more impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime), in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

b. Two or more impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction, failure to develop peer relationships appropriate to developmental level, a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest), or lack of social or emotional reciprocity are noted. Delay(s) or abnormal functioning in social interaction, language as used in social communication, or symbolic or imaginative play, with onset prior to age three are also evident.

M. Eligibility as a child with deafness.

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1. Deafness may apply to a documented bilateral hearing loss (sensorineural, or mixed conductive and sensorineural); a fluctuating or a permanent hearing loss; and/or documented auditory dyssynchrony (auditory neuropathy); or cortical deafness. This hearing loss results in qualitative impairments in communication/educational progress due to delays in one or more of the following: expressive/receptive vocabulary development, expressive/receptive language development (in English/primary language of the family or in sign language), speech development, written English skills.
2. Students suspected of being deaf shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.

N. Eligibility as a child with developmental delay.

1. The local educational agency may include developmental delay as one of the disability categories when determining whether a preschool child, aged two by September 30 to five, inclusive, is eligible under this chapter.
2. Other disability categories may be used for any child with a disability aged two to five, inclusive.
3. Developmental delay may include a child who has an established physical or mental condition which has a high probability of resulting in a developmental delay.

34 CFR § 300.111(b)

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O. Eligibility as a child with hearing impairment. Students suspected of having a hearing impairment shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.

P. Eligibility as a child with mental retardation. The terms intellectual disability and cognitive impairment may be used to describe this category. The child exhibits significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the test, on an individually administered, standardized measure of intelligence. The child also concurrently exhibits significantly impaired adaptive behavior in the home or community as determined by a composite score on an individual standardized instrument which measures two standard deviations or more below the mean. Developmental history (birth through 18) indicates significant impairment in cognitive/intellectual abilities and a current demonstration of significant impairment is present.

Q. Eligibility as a child with other health impairment.

1. Attention-deficit/hyperactivity disorder as indicated in diagnostic references, such as the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, involve the following characteristics.

   a. The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia , or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder,

Anxiety Disorder, Dissociative Disorder, or a Personality Disorder). The child shall exhibit six or more of the following symptoms of inattention that have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

(1) often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

(2) often has difficulty sustaining attention in tasks or play activities;

(3) often does not seem to listen when spoken to directly;

(4) often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions);

(5) often has difficulty organizing tasks and activities;

(6) often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework);

(7) often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

(8) often easily distracted by extraneous stimuli;

(9) often forgetful in daily activities, or

b. A child shall exhibit six or more of the following symptoms of hyperactivity-impulsivity and have persisted for at least 6 months to a degree that is maladaptive and inconsistent with developmental level:

(1) often fidgets with hands, feet, or squirm in seat;

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(2) often leaves seat in classroom or in other situations in which remaining seated is expected;

(3) often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

(4) often has difficulty playing or engaging in leisure activities quietly;

(5) is often "on the go" or often acts as if "driven by a motor " and often talks excessively; impulsivity**;**

(6) often blurts out answers before questions have been completed;

(7) often has difficulty awaiting turn; and

(8) often interrupts or intrudes on others; or

c. If criteria for Combined type-inattention and hyperactivity are met for the past six months. Some hyperactive-impulsive or inattentive symptoms that caused the impairment were present before age 7 years. Some impairment from the symptoms is present in two or more settings (e.g., at school, or work, and at home).

2. Eligibility may also apply to children with Tourette Syndrome or acute health problems such as those found in the definition of "Other Health Impairment" at 8 VAC 20-81-10.

a. Eligibility criteria includes limited strength, vitality, or alertness and other elements as described in the definition of "Other Health Impairment" at 8 VAC 20-81-10.

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R. Eligibility as a child with speech or language impairment.

1. The communication disorder results in a significant discrepancy from typical communication skills in one or more of the following areas; fluency, impaired articulation, expressive or receptive language impairment, or voice impairment. Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of socio-cultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.

2. Speech language pathology services may be special education or a related service.

S. Eligibility as a child with a visual impairment.

1. The child evidences at least one of the following characteristics.

a. Visual acuity in the better eye with best possible correction of:

(1) 20/200 or less at distance and/or near is considered blindness.

(2) better than 20/200 but worse than 20/70 at distance and/or near is considered visual impairment.

b. Visual field restriction in the better eye:

(1) remaining visual field of 20 degrees or less is considered blindness.

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(2) remaining visual field of 70 degrees or less but better than 20 degrees is considered visual impairment.

2. Special conditions, include, but are not limited to, oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision (documented medically and educationally), which may in the future, affect the student's ability to learn visually or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.

3. Students suspected of being blind or having a visual impairment, shall have an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the student's future needs for instruction in Braille or the use of Braille.

T. Children found not eligible for special education.

1. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence.

34 CFR § 300.622

2. If the school division decides that a child is not eligible for special education and related services, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures.

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34 CFR § 300.507

8 VAC 20-81-90. Termination of special education and related services.

A. A local educational agency shall evaluate a child with a disability in accordance with 8 VAC 20-81-70 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

34 CFR § 300.305(e)

B. The IEP Team shall terminate the child's eligibility for special education and related services in the following areas:

1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services.
2. A related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team making the determination shall include local educational agency personnel representing the specific related services discipline being terminated.
3. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8 VAC 20-81-170 C., but parental consent is not required.

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C. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child.

34 CFR §§ 300.9, 300.305(e)

D. Summary of Academic Achievement and Functional Performance.

1. For a child whose eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22, the local educational agency shall provide the child with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the local educational agency may provide the child with a summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the local educational agency shall provide the child with an updated summary when the child exits, or when the child's eligibility terminates due to graduation with a standard or advanced studies high school diploma or

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reaching the age of 22.

34 CFR § 300.305(e)(3)

8 VAC 20-81-100. Free appropriate public education.

A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the age of eligibility requirements in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they have not failed or been retained in a course or grade and are advancing from grade to grade, and students who have been suspended or expelled from school in accordance with the provisions of 8 VAC 20-81-160. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015.

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

b. The services and placement needed by each child with a disability to receive a free appropriate public education shall be based on the child's unique needs and not on the child's disability.

COV § 22.1-213; 34 CFR §§ 300.101; 300.109

2. Exceptions. The obligation to make a free appropriate public education to all

children with disabilities does not apply to:

a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to age-eligible students who have graduated but have not been awarded a standard or advanced studies high school diploma, or to those students who have been awarded a general educational development (GED) credential.

b. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

c. Children with disabilities who are eligible under IDEA Part B, subpart H, but who receive early intervention services under IDEA Part C.

34 CFR § 300.102(a)

B. A free appropriate public education shall be available to children with disabilities who reside within a school division but do not hold a valid U.S. citizenship or a student visa.

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C. Program options. Each local school division shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

34 CFR § 300.110

D. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, shall be at no cost to the parents of the child.

34 CFR § 300.104

E. Assistive technology devices.

1. Each local educational agency shall ensure that the following are functioning properly, including completing routine checks:

   a. Hearing aids worn in school by children with hearing impairments, including deafness; and

   b. The external components of surgically implanted devices.

2. A local educational agency is not responsible for the post-surgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device.)

34 CFR §§ 300.34(b); 300.113

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F. Availability of Assistive Technology.

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 8 VAC 20-81-10, are made available to a child with a disability if required as part of the child's:

   a. Special education;

   b. Related services; or

   c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

3. Local educational agencies are not required to provide personal devices, including eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.

34 CFR § 300.105

G. Transportation.

1. Each child with a disability, aged two to 21, inclusive, placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to

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benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications shall be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.
3. A local educational agency shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.
4. If a local educational agency enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent(s).
5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton, the Virginia school shall be responsible for the provision of

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transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

COV §§ 22.1-221, 22.1-347; 34 CFR § 300.107

H. Nonacademic and extracurricular services and activities.

1. Each local educational agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
2. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

34 CFR §§ 300.107, 300.117

I. Physical education.

1. General. Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a free appropriate public education, unless the local educational agency enrolls children without

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disabilities and does not provide physical education to children without disabilities in the same grade.

2. Regular physical education. Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:

a. The child is enrolled full time in a separate facility; or

b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.

3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the local educational agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

4. Education in separate facilities. The local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with subdivision 3. of this subsection.

34 CFR § 300.108

J. Extended school year services.

1. Each local educational agency shall ensure that extended school year services, including transportation to and from such services, are available as necessary to provide a free appropriate public education, consistent with subdivision 2. of this subsection.

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2. Extended school year services shall be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.
3. In implementing the requirements of this section, a local educational agency may not:

   a. Limit extended school year services to particular categories of disability;

   b. Unilaterally limit the type, amount, or duration of those services, or

   c. Limit the provision of extended school year services to only the summer.

34 CFR § 300.106

K. Children with disabilities in public charter schools.

1. Children with disabilities who attend charter schools shall be served by the local school division in the same manner as children with disabilities in its other schools, including the provision of supplementary and related services on site at the charter school to the same extent to which the LEA provides such services on the site to its other public schools.
2. The local school division shall ensure that all requirements of this chapter are met.

34 CFR § 300.209

L. Length of school day. School-aged students with disabilities shall be provided a

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school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise.

M. Methods and payments.

1. The Virginia Department of Education may use whatever state, local, federal, and private sources of support are available to meet the requirements of this part.
2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.
3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

34 CFR § 300.103

N. Disability harassment. Each local educational agency shall have in effect policies that prohibit harassment to children with disabilities.

28 CFR § 35.149; 34 CFR § 104.4

8 VAC 20-81-110. Individualized education program.

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by:

1. A local school division; or

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2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

34 CFR § 300.112

B. Accountability

1. At the beginning of each school year, each local educational agency shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue.

34 CFR § 300.323(a)

2. Each local educational agency shall ensure that an IEP:

a. Is in effect before special education and related services are provided to an eligible child;

b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;

c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and

d. Is implemented as soon as possible following parental consent to the IEP, not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.

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34 CFR § 300.323(c)

3. Each local educational agency shall ensure that:

a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Teachers and providers are informed of:

(1) Their specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

34 CFR § 300.323(d)

4. Each local educational agency is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.

5. Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address:

a. any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted under this chapter;

c. Information about the child provided to or by the parent(s);

d. The child's anticipated needs; or

e. Other matters.

34 CFR § 300.324(b)

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6. Each local educational agency shall provide special education and related services to a child with a disability in accordance with the child's IEP.

34 CFR § 300.350 (a)

7. This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance.

8. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.

   a. If the local educational agency considers the parent's request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent's request and provide the parent information on this chapter's dispute resolution options.

9. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child.

34 CFR § 300.324(a)(5)

10. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent(s) and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current

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IEP.

a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes;

b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated;

c. This meeting is not a substitute for the required annual IEP meeting.

34 CFR § 300.324(a)(4) & (6)

C. IEP Team

1. General. The local educational agency shall ensure that the IEP team for each child with a disability includes:

a. the parent(s) of the child;

b. not less than one regular education teacher of the child (if the child is or may be participating in the regular educational environment);

c. not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist.

d. A representative of the local educational agency who is:

(1) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;

(2) knowledgeable about the general education curriculum; and

(3) knowledgeable about the availability of resources of the local education

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agency.

A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria.

e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child.

f. At the discretion of the parent(s) or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or local educational agency) who invited the individual to be a member of the team.

g. Whenever appropriate, the child.

34 CFR § 300.321(a) & (c)

2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions C.1.b. through C.1.e of this section.

3. Secondary transition service participants.

a. The local educational agency shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

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(1) The student's postsecondary goals;

(2) The needed transition services for the student; or

(3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(1) If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

34 CFR § 300.321(b)

4. Part C transition participants.

In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's(s') request, invite the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

34 CFR § 300.321(f)

D. IEP team attendance.

1. A required member of the IEP team described in subdivisions C.1.b. through

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C.1.e. of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

a. the parent and the local educational agency consent in writing to the excusal, and

b. the member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

34 CFR § 300.321(e)

E. Parent participation.

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including:

a. Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and

b. Scheduling the meeting at a mutually agreed on time and place.

34 CFR § 300.322(a)

2. Notice.

a. General notice. The notice given to the parent(s):

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(1) May be in writing, or given by telephone or in person with proper documentation;

(2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and

(3) Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

b. Additional notice requirements are provided if transition services are under consideration.

(1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system.

(2) For secondary transition, the notice shall also:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;

(b) Indicate that the local educational agency will invite the student; and

(c) Identify any other agency that will be invited to send a representative.

34 CFR § 300.322(b)

3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences.

a. If the local educational agency uses an alternative means of meeting

participation that results in additional costs, the local educational agency is responsible for those costs.

34 CFR § 300.322(c)

4. A meeting may be conducted without a parent(s) in attendance if the local educational agency is unable to convince the parent(s) that they should attend. In this case, the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as:

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parent(s) and any responses received; or

c. Detailed records of visits made to the parent's(s') home or place of employment and the results of those visits.

34 CFR § 300.322(d)

5. The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

34 CFR § 300.322(e)

6. Audio and video recording of IEP meetings.

a. The local educational agency shall permit the use of audio recording devices at IEP meetings. The parent(s) shall inform the local educational agency

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before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent or parents shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records the meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes part of the child's educational record.

b. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:

(1) video recording devices at IEP meetings; or

(2) audio or video recording devices at meetings other than meetings that are for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8 VAC 20-81-160.

These policies shall:

(1) stipulate that the recordings become part of the child's educational record;

(2) ensure that the policy is uniformly applied; and,

(3) if the policy limits or prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

7. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a

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disability with a written description of the factors in subdivisions F.1. and F.2. of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.

8. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting.

34 CFR § 300.322(f)

F. Development, review, and revision of the IEP.

1. In developing each child's IEP, the IEP team shall consider:

a. The strengths of the child;

b. The concerns of the parent(s) for enhancing the education of their child;

c. The results of the initial or most recent evaluation of the child; and

d. The academic, developmental, and functional needs of the child.

34 CFR § 300.324(a)

2. The IEP team also shall:

a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;

b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

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c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

d. Consider the communication needs of the child;

e. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

f. Consider whether the child requires assistive technology devices and services.

34 CFR § 300.324(a)

3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP.

34 CFR § 300.324(b)(2)

4. The regular education teacher of a child with a disability, as a member of the IEP team, shall participate, to the extent appropriate, in the development, review, and

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revision of the child's IEP, including assisting in the determination of:

a. Appropriate positive behavioral interventions and supports and other strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.

34 CFR § 300.324(a)(3)

5. Nothing in this section shall be construed to require:

a. the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or

b. that additional information be included in the child's IEP beyond what is explicitly required in this chapter.

34 CFR § 300.320(d)

6. The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-80-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall provide the parent(s) with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8 VAC 20-80-170.

G. Content of the individualized education program. The IEP for each child with a disability shall include:

1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement

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and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.

b. The present level of performance shall directly relate to the other components of the IEP.

34 CFR § 300.320(a)(1)

2. A statement of measurable annual goals, including academic and functional goals designed to:

a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and

b. Meet each of the child's other educational needs that result from the child's disability.

34 CFR § 300.320(a)(2)

3. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.

34 CFR § 300.320(a)(2)

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4. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the child:

   a. To advance appropriately toward attaining the annual goals;

   b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

   c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.

34 CFR § 300.320(a)(4)

5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section.

34 CFR § 300.320(a)(5)

6. The following information concerning state and divisionwide assessments shall be included:

   a. A statement of any individual accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;

   b. If the IEP team determines that the child will not participate in a particular

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state assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and

(3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

c. A statement that the child shall participate in either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;

d. A statement of any individual accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;

e. If the IEP team determines that the child will not participate in a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed;

(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or

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advanced studies diploma; or other matters.

34 CFR § 300.320(a)(6)

7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.

34 CFR § 300.320(a)(7)

8. A statement of:

a. How the child's progress toward the annual goals will be measured;

b. When periodic reports on the progress the child is making toward meeting the goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

34 CFR § 300.320(a)(3)

9. Initial Transition services

a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.

b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§ 1431 et seq.) including:

(1) a statement regarding natural environments, and

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(2) a component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

c. These components of the child's IFSP may be incorporated into the child's IEP.

34 CFR §§ 300.101(b); 300.323(b)

10. Secondary transition services.

a. Prior to the child entering secondary school but beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, the IEP shall include:

(1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

(2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and

(3) A statement, if appropriate, of interagency responsibilities or any needed linkages.

b. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

c. Transition services shall be based on the individual child's needs, taking into

account the child's strengths, preferences, and interests.

34 CFR §§ 300.43; 300.320(b)

11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority.

34 CFR § 300.320(c)

H. Agency responsibilities for secondary transition services.

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

34 CFR § 300.324(c)

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities.

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.

2. All requirements regarding IEP development, review, and revision in this section

apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard, or advanced studies diploma,

a. The requirements related to least restrictive environment in 8 VAC 20-81-130 do not apply.

3. The following additional exceptions to subdivision 2. of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:

a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.

b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.

c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

34 CFR §§ 300.324(d) & 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et seq.)

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8 VAC 20-81-120. Children who transfer.

A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to a local educational agency in Virginia within the same school year are subject to the following provisions.

1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.

   a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.

   b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.

2. The new local educational agency shall provide a free appropriate public education to the child, in consultation with the parent(s), including services

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comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:

a. adopts the child's IEP from the previous local educational agency; or

b. conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this chapter.

3. The local educational agency may develop and implement an interim IEP while obtaining and reviewing whatever information is needed to develop a new IEP.

4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.

a. The parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute.

34 CFR § 300.323(e), (f), & (g)

B. The new local educational agency shall provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.

C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter. During the evaluation period, the local educational

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agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.

D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local educational agency, the new local educational agency shall review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team is responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new local educational agency from the former Comprehensive Services Act team.

The CSA Implementation Manual

8 VAC 20-81-130. Least restrictive environment and placements.

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure:

a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities; and

b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature

or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 CFR § 300.114

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic and extracurricular services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. The local educational agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

34 CFR § 300.117

3. For children placed by local school divisions in public or private institutions or other care facilities, the local educational agency shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8 VAC 20-81-150.)

34 CFR §§ 300.114; 300.118

B. Continuum of alternative placements.

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special

education and related services.

2. The continuum shall:

a. Include the alternative placements listed in the term “special education” at 8 VAC 20-81-10, and

b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular education class placement. The continuum includes integrated service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities is acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

COV § 22.1-213; 34 CFR § 300.115

C. Placements.

1. In determining the educational placement of a child with a disability, including a

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preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team shall revise the IEP, as

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appropriate, and determine the delivery of homebound services, including the number of hours of services.

Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et seq.); 34 CFR § 300.116

8 VAC 20-81-140. Placement of children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

A. Placements are made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (Virginia schools). The Virginia schools shall determine if the student meets the admission criteria of the Virginia schools.

COV § 22.1-348

B. When an eligible child is placed in the Virginia schools, the local school division is responsible for ensuring compliance with the requirements of this chapter.

C. For students who are residential students, the respective Virginia school is responsible for transportation. For students who are day students, the placing local school division is responsible for transportation to and from the school.

COV § 22.1-347(c)

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8 VAC 20-81-150. Private school placement.

A. Private school placement by a local school division or Comprehensive Services Act team.

1. When a child with a disability is placed by a local school division or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private special education school or facility that is licensed or has a certificate to operate, the local school division is responsible for ensuring compliance with the requirements of this chapter, including participation in state and division-wide assessments. The local school division shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in a private school or facility.

34 CFR § 300.325(c)

2. Before a local school division places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the local school division shall initiate and conduct a meeting in accordance with 8 VAC 20-81-110 to develop an IEP for the child. The local school division shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.

34 CFR § 300.325(a)

3. When a child is presently receiving the services of a private school or facility that

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is licensed or has a certificate to operate, the local school division shall ensure that a representative of the private school or facility attends the IEP meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

34 CFR § 300.325(a)(2)

4. After a child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division.

34 CFR § 300.325(b)(1)

5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent(s) and a local school division representative:

a. Are involved in any decision affecting the child's IEP;

b. Agree to any proposed changes in the program before those changes are implemented; and

c. Are involved in any meetings that are held regarding reevaluation.

34 CFR § 300.325(b)(2)

6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with the local

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school division.

34 CFR § 300.325(c)

7. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter are extended to the child.

34 CFR § 300.101

8. If the parent(s) requests a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent(s) and the local educational agency prior to placement by the Comprehensive Services Act team.

34 CFR §300.2(c)

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children, in accordance with the Code of Virginia.

COV § 22.1-218.1

B. Placement of children by parents if a free appropriate public education is at issue.

1. Local school divisions are not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local school division made a free appropriate public education available to the child and the parent(s) elected to place the child in a

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private school or facility.

34 CFR § 300.148(a)

2. Disagreements between a parent(s) and a local school division regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8 VAC 20-81-200.

34 CFR § 300.148(b)

3. If the parent(s) of a child with a disability, who previously received special education and related services under the authority of a local school division, enrolls the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a Special Education Hearing Officer may require the local school division to reimburse the parent(s) for the cost of that enrollment if the court or the Special Education Hearing Officer finds that the local school division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a Special Education Hearing Officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by the local school division.

34 CFR § 300.148(c)

4. The cost of reimbursement described in this section may be reduced or denied:

   a. If:

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(1) at the most recent IEP meeting that the parent(s) attended prior to removal of the child from the public school, the parent(s) did not inform the IEP team that they were rejecting the placement proposed by the local school division to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(2) at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent(s) did not give written notice to the local school division of the information described above;

b. If, prior to the parent's(s') removal of the child from the public school, the local school division informed the parent(s), through proper notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) did not make the child available for the evaluation; or

c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s).

34 CFR § 300.148(d)

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's(s') failure to provide the notice to the local school division if:

a. The parent is illiterate or cannot write in English;

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b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent(s) from providing the notice; or

d. The parent(s) had not received notice of the notice requirement in this section.

34 CFR § 300.148(e)

C. Parentally-placed private school children with disabilities. The provisions of this section apply to children with disabilities who are enrolled by their parent(s) in private schools.

1. Definitions applicable to this subsection.

a. The term "private school" includes:

(1) Private, denominational, or parochial schools in accordance with § 22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1. of this subsection;

(2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1. of this subsection;

(3) Students who are home-tutored in accordance with § 22.1-254 of the Code of Virginia; or

(4) Students who receive home instruction in accordance with § 22.1-254.1 of the Code of Virginia.

b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

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34 CFR § 300.13

c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

34 CFR § 300.36

2. Child find.

a. Each school division shall locate, identify, and evaluate all children with disabilities who are parentally-placed in private schools located in the school division. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.

b. Each local school division shall consult with appropriate representatives of the private schools on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

c. The child find process shall be designed to ensure:

(1) The equitable participation of parentally-placed private school children; and

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(2) An accurate count of these children.

COV 22.1-254.1; 34 CFR §§ 300.130; 300.131(a) & (b); 300.132(a);300.134(a)

3. Services plan. Each local school division shall ensure that a services plan is developed and implemented for each parentally-placed private school child with a disability who has been designated to receive special education and related services under this part.

34 CFR § 300.132(b)

4. Expenditures.

a. To meet the requirement of the Act, each local school division shall spend the following on providing special education and related services to private school children with disabilities:

(1) For children, aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under section 1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children with disabilities in its jurisdiction, aged three to 21; and

(2) For children, aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under section 1419 of the Act as the number of privately-placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by the school division, is to the total

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number of children with disabilities in its jurisdiction, aged three to five.

(3) If a local school division has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, the local school division shall obligate the remaining funds for special education and related services, including direct services, to parentally-placed private school children with disabilities during a carry-over period of one additional year.

34 CFR § 300.133(a)

(4) Local educational agencies may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision.

34 CFR § 300.133(d)

b. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the local school division, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the local school division.

34 CFR § 300.133(b)

c. After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, the local school division shall determine the number of parentally-placed private school children with

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disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year. The child count shall be used to determine the amount that the local school division shall spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

34 CFR § 300.133(c)

d. Expenditures for child find activities, including evaluation and eligibility, described in 8 VAC 20-81-50 through 8 VAC 20-81-80, may not be considered in determining whether the local school division has met the expenditure requirements of the Act.

34 CFR § 300.133(a)

e. Local school divisions are not prohibited from providing services to parentally-placed private school children with disabilities in excess of those required by this section.

34 CFR § 300.133(d)

5. Consultation.

a. The local school division shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children. This includes;

(1) How the process will operate throughout the school year to ensure that

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parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(2) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities;

(3) The types of services, including direct services and alternate service delivery mechanisms;

(4) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(5) How and when those decisions will be made.

34 CFR § 300.134(a), (c), & (d)

b. If the local school division disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local school division shall provide to the private school officials a written explanation of the reasons why the local school division chose not to provide services directly or through a contract.

34 CFR § 300.134(e)

c. Following consultation, the local school division shall obtain a written affirmation signed by the representatives of participating private schools.

(1) If the representatives do not provide the affirmation within a reasonable period of time, the local school division shall forward the documentation of

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the consultation process to the Virginia Department of Education.

34 CFR § 300.135

d. A private school official has the right to submit a complaint to the Virginia Department of Education that the local school division:

(1) did not engage in consultation that was meaningful and timely; or

(2) did not give due consideration to the views of the private school official.

e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by the local school division and the appropriate documentation.

(1) If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.

(2) The Virginia Department of Education shall forward the appropriate documentation to the U. S. Secretary of Education.

34 CFR § 300.136

6. Equitable services determined.

a. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

b. Decisions about the services that will be provided to the parentally-placed private school children with disabilities are made in accordance with the

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consultation process under subdivision 4. of this subsection and a services plan.

c. The local school division shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

d. The local school division shall:

(1) initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) ensure that a representative of the private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

34 CFR § 300.137

7. Services provided.

a. The services provided to parentally-placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to these children do not have to meet the requirements for highly qualified special education teachers.

b. Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

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c. No parentally-placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under this subsection shall have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.

(2) The services plan, to the extent appropriate, shall meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.

e. The services shall be provided:

(1) by employees of a local school division; or

(2) through contract by the local school division with an individual, association, agency, organization, or other entity.

f. Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

34 CFR §§ 300.138; 300.132(b)

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8. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law.

34 CFR §300.139(a)

9. Transportation.

a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability shall be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school or to the child's home depending on the timing of the services.

b. Local school divisions are not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.

34 CFR § 300.139(b)

10. Procedural safeguards, due process, and complaints.

a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that a local school division has failed to

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meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally-placed private school children with disabilities.

c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8 VAC 20-81-200.

34 CFR § 300.140

d. The dispute resolution options described in subdivisions 9.b. and 9.c. of this subsection apply to the local educational agency in which the private school is located.

34 CFR § 300.140(b)(2)

11. Separate classes prohibited. A local school division may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools.

34 CFR §300.143

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12. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school.

34 CFR § 300.141

13. Use of public school personnel. A local school division may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally-placed private school children with disabilities and if those services are not normally provided by the private school.

34 CFR § 300.142(a)

14. Use of private school personnel. A local school division may use funds available under the Act to pay for the services of an employee of a private school to provide services to a parentally-placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control.

34 CFR § 300.142(b)

15. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

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a. A local school division shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Act for the benefit of parentally-placed private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. The local school division shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.

34 CFR § 300.144

16. Reporting Requirements. Each local school division shall maintain in its records, and provide to the Virginia Department of Education, the following information related to parentally-placed private school children:

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a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

34 CFR § 300.132(c)

8 VAC 20-81-160. Discipline procedures.

A. General. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.

COV § 22.1-277; 34 CFR § 300.530(a)

B. Short-term removals.

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10 cumulative school days in a school year.

   a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.

   b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do

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not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C. of this section apply.

(1) The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.

(2) These removals only constitute a change in placement if the local educational agency determines there is a pattern.

34 CFR § 300.530(b)

2. Services during short-term removals.

a. The local educational agency is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed.

b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations.

34 CFR § 300.530(b)(2)

c. For additional short-term removals, which do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide

assessment programs, in accordance with the provisions of 8 VAC 20-81-20(4).

20 USC § 1412(a)(16)(A)

C. Long-term removals.

1. A long-term removal is for more than 10 consecutive school days; or

2. The child has received a series of short-term removals that constitutes a pattern:

a. because the removals cumulate to more than 10 school days in a school year;

b. because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and

c. because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

3. The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings.

34 CFR §§ 300.530(a) & (b); 300.536

4. On the date on which the decision is made to long–term remove the student because of a violation of a code of student conduct, the local educational agency shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards.

34 CFR § 300.530(h)

5. Special circumstances.

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a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:

(1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

b. The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.

34 CFR § 300.530(g)

c. For purposes of this part, "weapon", "controlled substance", and "serious bodily injury" have the meaning given the terms under 8 VAC 20-81-10.

6. Services during long-term removals.

a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to:

(1) continue to receive educational services so as to enable the student to

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continue to participate in the general educational curriculum, although in another setting;

(2) continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and

(3) receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

34 CFR §§ 300.530(d); 300.531

b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of 8 VAC 20-81-20(4).

20 USC § 1412(a)(16)(A)

c. The IEP team determines the services needed for the child with a disability who has been long-term removed.

34 CFR § 300.530(d)(5)

D. Manifestation determination.

1. Manifestation determination is required if the local educational agency is contemplating a removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.

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2. The local educational agency, the parent(s), and relevant members of the child's IEP team, as determined by the parent and the local educational agency, constitute the IEP team that shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made.

3. The IEP team shall review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent(s).

4. The IEP team then shall determine the conduct to be a manifestation of the child's disability:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.

5. If the IEP team determines that the local educational agency failed to implement the child's IEP, the local educational agency shall take immediate steps to remedy those deficiencies.

6. If the IEP team determines that the child's behavior was a manifestation of the child's disability, the IEP team shall:

a. conduct a functional behavioral assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention

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plan for the child; or

b. If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior; and

c. Return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change in placement as part of the modification of the behavioral intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C.5.a. of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45 day period.

7. If the IEP team determines that the child's behavior was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C.6.a. of this section.

34 CFR § 300.530(c), (e), (f), & (g)

E. Appeal.

1. If the child's parent(s) disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent(s) may request an

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expedited due process hearing.

2. A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due process hearing.

3. The local educational agency is responsible for arranging the expedited due process in accordance with the Virginia Department of Education's hearing procedures at 8 VAC 20-81-210.

a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.

b. The Special Education Hearing Officer shall make a determination within 10 school days after the hearing.

c. Unless the parent(s) and the local educational agency agree in writing to waive the resolution meeting, or agree to use the mediation process,

(1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.

d. The decisions on expedited due process hearings are appealable consistent with 8 VAC 20-81-210.

34 CFR § 300.532(a) & (c)

F. Authority of the Special Education Hearing Officer.

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1. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is likely to result in injury to self or others.

2. The Special Education Hearing Officer under 8 VAC 20-81-210 may:

a. return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of subsection C. and D. of this section, or that the child's behavior was a manifestation of the child's disability; or

b. order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the Special Education Hearing Officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.

34 CFR §§ 300.532(a) & (b)

3. A local educational agency may ask the Special Education Hearing Officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others.

34 CFR § 300.532(b)(3)

G. Placement during appeals.

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1. The child shall remain in the interim alternative educational setting pending the decision of the Special Education Hearing Officer, or
2. Until the expiration of the time for the disciplinary period set forth in this section, whichever comes first, unless the parent and the local educational agency agree otherwise.

34 CFR § 300.533

H. Protection for children not yet eligible for special education and related services.

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct of the local educational agency may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

   (a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;

   (b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or

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(c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.

3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has not allowed a previous evaluation of the child or has refused services; or

(b) The child has been evaluated in accordance with 8 VAC 20-81-70 and 8 VAC 20-81-80 and determined ineligible for special education and related services.

4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.

a. Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

b. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the local educational agency

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and information provided by the parent(s), the local educational agency shall provide special education and related services as required for a child with a disability who is disciplined.

34 CFR § 300.534

I. Referral to and action by law enforcement and judicial authorities.

1. Nothing in this chapter prohibits a local educational agency from reporting a crime by a child with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.
2. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

34 CFR § 300.535

J. Information on Disciplinary Actions.

1. The Virginia Department of Education requires that local educational agencies include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child.
2. Local educational agencies are responsible for transmitting the statement to the

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Virginia Department of Education upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.

3. The statement may include:

a. A description of any behavior engaged in by the child who required disciplinary action;

b. A description of the disciplinary action; and

c. Any other information that is relevant to the safety of the child and other individuals involved with the child.

4. If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

34 CFR § 300.229

8 VAC 20-81-170. Procedural safeguards.

A. Opportunity to examine records; parent participation.

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent(s) of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.

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(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that the parent(s) of a child with a disability has the opportunity to participate in meetings described in subdivision 1.a.(2) of this subsection, including notifying the parent(s) of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) inform the parent (s) that at their discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;

(c) inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or

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other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions. Each local educational agency shall ensure that:

(1) A parent(s) of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child;

(2) In implementing the requirements of subdivision c.(1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8 VAC 20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing;

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(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent(s) if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

34 CFR §§ 300.322(e); 300.500; 300.501; 8 VAC 20-150-10 et seq.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45 day removals under 8 VAC 20-81-160 D.6.c.

34 CFR § 300.530(f)(2) & (g)

B. Independent educational evaluation.

1. General.

a. The parent(s) of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent(s) of a child with a disability, upon request for an independent educational evaluation, information about where an independent educational evaluation may be

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obtained and the applicable criteria for independent educational evaluations.

34 CFR § 300.502(a)

2. Parental right to evaluation at public expense.

a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by the local educational agency.

b. If the parent(s) requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.

c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.

d. If the parent(s) requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and the local educational agency may not unreasonably delay either

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providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

34 CFR § 300.502(a), (b), & (e)

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation:

a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and

b. May be presented by any party as evidence at a hearing under 8 VAC 20-81-210.

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34 CFR § 300.502(c)

4. Requests for evaluations by Special Education Hearing Officers. If a Special Education Hearing Officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be a public expense.

34 CFR § 300.502(d)

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the parent(s) of a child with a disability within a reasonable time before the local educational agency:

a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

34 CFR § 300.503(a)

2. The notice shall include:

a. A description of the action proposed or refused by the local educational agency;

b. An explanation of why the local educational agency proposes or refuses to take the action;

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c. A description of any other options the IEP team considered and the reasons for the rejection of those options;

d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;

e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;

f. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the parent(s) to contact in order to obtain assistance in understanding the provisions of this section.

34 CFR § 300.503(b)

3. The notice shall be:

a. written in language understandable to the general public and

b. provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.

c. If the native language or other mode of communication of the parent(s) is not a written language, the local educational agency shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;

(2) The parent(s) understand the content of the notice; and

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(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

34 CFR § 300.503(c)

D. Procedural safeguards notice.

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability shall be given to the parent(s) by the local educational agency only one time a school year, except that a copy shall be given to the parent(s) upon:

a. Initial referral for or parent request for evaluation;

b. If the parent requests an additional copy;

c. Receipt of the first state complaint during a school year;

d. Receipt of the first request for a due process hearing during a school year; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement.

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists, but the local educational agency does not meet its obligation under subsection D.1. of this section by directing the parent to the Web site. The local educational agency shall offer the parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision D.1.

34 CFR §§ 300.504(a) & (b); 300.508(e)(1)

3. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:

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a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

e. Opportunity to present and resolve complaints through the due process procedures;

f. The availability of mediation;

g. The child's placement during pendency of due process proceedings;

h. Procedures for students who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by parents of children in private schools at public expense;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions, including the time period in which to file those actions;

l. Attorneys' fees; and

m. The opportunity to present and resolve complaints through the state complaint procedures, including:

(1) the time period in which to file a complaint;

(2) the opportunity for the local educational agency to resolve the complaint; and

(3) the difference between the due process and the state complaint

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procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

34 CFR § 300.504(c)

4. The notice required under this subsection shall meet the prior notice requirements regarding understandable language in subdivision C.3. of this section.

34 CFR § 300.504(d)

E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting;

34 CFR § 300.300(a)(1)(i)

b. An Initial eligibility determination or any change in categorical identification;

c. Initial provision of special education and related services to a child with a disability;

34 CFR § 300.300(b)(1)

d. Any revision to the child's IEP services, except as outlined in division E.2.f. of this subsection;

e. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F. of this section; and

34 CFR § 300.154

f. Inviting to an IEP meeting a representative of any participating agency that is

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likely to be responsible for providing or paying for secondary transition services.

34 CFR § 300.321(b)(3)

2. Parental consent not required. Parental consent is not required before:

a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment;

b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent(s) of all children;

34 CFR § 300.300(d)(1)

c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation;

34 CFR § 300.302

d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals;

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

f. Any partial or complete termination of special education and related services;

g. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if:

(1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent(s);

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(2) The parent's rights have been terminated; or

(3) The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consent to the initial evaluation.

h. The local educational agency provides a free appropriate public education to children with disabilities who transfer public agencies in Virginia or transfer to Virginia from another state in accordance with 8 VAC 20-81-120.

34 CFR §§ 300.300(a)(2); 300.323(e) & (f)

3. Revoking consent. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8 VAC 20-81-10.

4. Refusing consent.

a. If the parent(s) refuses consent for initial evaluation or a reevaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation.

34 CFR § 300.300(a)(3) & (c)(1)

b. If the parent(s) refuses to consent to the initial provision of special education and related services:

(1) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

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(2) The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

34 CFR § 300.300(b)(3) & (4)

c. If the parent(s) of a parentally-placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency:

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8 VAC 20-81-150.

34 CFR § 300.300(d)(4)

d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter.

34 CFR § 300.300(d)(3)

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5. Withholding consent.

a. If the parent(s) fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation.

34 CFR § 300.300(a)(3) & (c)(1)

b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond.

34 CFR § 300.300(c)(2)

c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency follows the provisions of subdivision 4.b. of this subsection.

34 CFR § 300.300(b)(3) & (4)

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services.

34 CFR § 300.300(a)(1)(ii)

7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services.

34 CFR §§ 300.300(a)(1)(iii) & (b)(2)

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8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as:

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parent(s) and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 CFR §§ 300.322(d); 300.300(a),(b),(c) & (d)(5)

F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational agency using private insurance to pay for services required under this chapter, shall provide notice to the parent(s) and obtain informed parental consent in accordance with 8 VAC 20-81-300.

34 CFR § 300.154

G. Confidentiality of information.

1. Access rights.

a. The local educational agency shall permit the parent(s) to inspect and review any education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. The local

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educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8 VAC 20-81-160 and 8 VAC 20-81-210, or resolution session in accordance with 8 VAC 20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

34 CFR § 300.613

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency,

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obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records.

34 CFR § 300.614

3. Record on more than one child. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.

34 CFR § 300.615

4. List of types and locations of information. Each local educational agency shall provide a parent(s) on request a list of the types and locations of education records collected, maintained, or used by the local educational agency.

34 CFR § 300.616

5. Fees.

a. Each local educational agency may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

34 CFR § 300.617

6. Amendment of records at parent's request.

a. A parent(s) who believes that information in the education records collected,

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maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.

b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7. of this subsection.

34 CFR § 300.618

7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

34 CFR § 300.619

8. Results of hearing.

a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the local educational agency decides that the

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information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.

34 CFR § 300.620

9. Hearing procedures. A hearing held under subdivision 7. of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act.

20 USC § 1232g; 34 CFR § 300.621

10. Consent.

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act (20 USC §

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1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent(s) resides.

34 CFR §§ 300.32; 300.622

11. Safeguards.

a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting, maintaining, or using personally identifiable information

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shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.

d. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

34 CFR § 300.623

12. Destruction of information.

a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

34 CFR § 300.624

H. Electronic Mail. If the local educational agency makes the option available, parent(s) of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail.

34 CFR § 300.505

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I. Electronic Signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

COV § 59.1-479 et seq.; 34 CFR § 300.9

8 VAC 20-81-180. Transfer of rights to students who reach the age of majority.

A. All rights accorded to the parent(s) under the Act transfer to the student upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution.

34 CFR § 300.520

B. Notification.

1. The local educational agency shall notify the parent(s) and the student of the following:

a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and

b. That procedures exist for appointing the parent(s) or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in

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subsection C. of this section.

34 CFR § 300.520

2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18.

34 CFR § 300.320(c)

3. The local educational agency shall provide any further notices required under the Act to both the student and the parent(s).

4. The local educational agency may continue to invite the parent(s), as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.

5. The adult student may invite the student's parent(s) to participate in meetings where decisions are being made regarding the student's educational program.

C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Act shall transfer to the adult student, unless one of the following actions has been taken:

1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;

2. The adult student designates, in writing, by power of attorney or similar legal

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document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures:

a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3.a. of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.

c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education

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services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent shall be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of local educational agencies. Challenges shall be provided in writing to the local educational agency's administrator of special education who then shall notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D. of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D. of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for

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60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or

34 CFR § 300.520(b)

4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with mental retardation in accordance with § 37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

D. If the local educational agency receives written notification of the action in subdivision C.3. of this section or if the state-operated program receives the judicial certification in subdivision C.4. of this section, the local educational agency shall designate the parent(s) of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

1. If the parent(s) or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:

a. An adult brother or sister;

b. An adult aunt or uncle; or

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c. A grandparent.

2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

8 VAC 20-81-190. Mediation.

A. Each local educational agency shall ensure that the parent(s) of a child with a disability are informed of the option of mediation to resolve disputes involving the identification, evaluation of the child, or educational placement and services of the child or the provision of a free appropriate public education to the child, including matters arising prior to the filing of a state complaint or request for a due process hearing. Mediation is available to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent.

COV § 22.1-214(B); 34 CFR § 300.506(a)

B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is:

1. Voluntary on the part of both the local educational agency and parent;

2. Not used to deny or delay a parent's(s') right to a due process hearing or to deny any other rights afforded under the Act; and

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3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

COV § 22.1-214(B); 34 CFR § 300.506(b)(1)

C. The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under §1472 or §1473 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process.

34 CFR § 300.506(b)(2)

D. In accordance with the Virginia Department of Education's procedures:

1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;
2. The mediator is chosen on a rotation basis; and
3. The Virginia Department of Education bears the cost of the mediation process, including costs in subsection C. of this section.

34 CFR § 300.506(b)(3) & (4)

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E. The mediation process shall:

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

2. Conclude with a written legally binding agreement, if an agreement is reached by the parties to the dispute, that:

a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

b. Is signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and

c. Is enforceable in any state or federal court of competent jurisdiction.

3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.

34 CFR § 300.506(b)(5), (b)(6), & (b)(7)

F. An individual who serves as a mediator:

1. May not be an employee of any local educational agency or the Virginia Department of Education if the Virginia Department of Education is providing direct services to a child who is the subject of the mediation process;

2. Shall not have a personal or professional conflict of interest, including

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relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and

3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

34 CFR §300.506(c)

8 VAC 20-81-200. Complaint resolution procedures.

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system.

34 CFR § 300.151

B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall:

1. Be in writing;
2. Include the signature and contact information for the complainant;
3. Contain a statement that a local educational agency has violated the Act or these special education regulations;
4. Include the facts upon which the complaint is based;
5. If alleging violations with respect to a specific child, include:

   a. the name and address of the residence of the child;

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b. the name of the school the child is attending

c. in the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Act (42 USC § 11434a(2)), available contact information for the child, and the name of the school the child is attending;

d. a description of the nature of the problem of the child, including facts relating to the problem; and

e. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

6. Address an action that occurred not more than one year prior to the date the complaint is received;
7. Contain all relevant documents; and
8. Be provided simultaneously to the local educational agency or public agency serving the child.

34 CFR §§ 300.151; 300.153

C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B. of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and the local educational agency in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.

D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an investigation to determine whether the local educational agency is in compliance

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with applicable law and regulations in accordance with the following procedures:

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.

   a. The notification sent to the local educational agency shall include:

      (1) A copy of the complaint;

      (2) An offer of technical assistance in resolving the complaint;

      (3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;

      (4) Notification of the opportunity for the parties to engage voluntarily in mediation;

      (5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:

         (a) Written documentation that the complaint has been resolved; or

         (b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the parents(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also simultaneously send

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the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.

b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.

c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.

2. If a reply from the local educational agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the local educational agency advising that failure to respond within seven business days

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of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.

c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.

4. During the course of the investigation, the Virginia Department of Education shall:

a. Conduct an investigation of the complaint which shall include a compete

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review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.

b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.

(1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.

(2) An extension of the 60 calendar day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.

(3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.

d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:

(1) Technical assistance activities;

(2) Negotiations; and

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(3) Corrective actions to achieve compliance.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the local educational agency to bring it into compliance with applicable timelines.

5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

34 CFR §§ 300.151; 300.152

E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.

F. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30

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business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

G. If the local educational agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8 VAC 20 81-290, it is determined that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation.

COV § 22.1-214(E)

I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

34 CFR § 300.151

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8 VAC 20-81-210. Due process hearing.

A. The Virginia Department of Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:

1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;
2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
3. Educational placement and services of the child; and
4. Provision of a free appropriate public education to the child.

COV § 22.1-214; 34 CFR §§ 300.121; 300.507 through 300.518

B. In administering the special education due process hearing system, the Virginia Department of Education establishes procedures for:

1. Recruitment, selection, and appointment of Special Education Hearing Officers.
   a. All Special Education Hearing Officers shall possess the following minimum qualifications for appointment to the Special Education Hearing Officers' list:
      (1) Active membership in good standing in the Virginia State Bar;
      (2) Active practice of law for at least five years. In order to satisfy this requirement, the applicant shall have completed five years of active practice of law with two of these years in Virginia. For purposes of this section, the active practice of law exists when, on a regular and systematic basis, in the relation of attorney and client, one furnishes to another advice or service

under circumstances which imply his possession and use of legal knowledge and skill. If not presently engaged in the active practice of law, the applicant shall, in addition to the requirements of this section, have previously served as a hearing officer, administrative law judge, or possess extensive prior experience with administrative hearings;

(3) Demonstrated knowledge of federal and state laws and regulations regarding special education;

(4) Prior experience with administrative hearings or knowledge of administrative law;

(5) Demonstrated legal writing ability;

(6) Willingness to travel to any area of the state to conduct hearings; and

(7) Completion of training programs, as required by the Virginia Department of Education.

2. Providing Special Education Hearing Officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.

3. Evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers.

   a. In considering whether a Special Education Hearing Officer will be removed from the list of eligible Special Education Hearing Officers, the Virginia Department of Education shall consider allegations of:

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(1) Continuous pattern of untimely decisions, or failure to render decision within regulatory time frames;

(2) Unprofessional demeanor;

(3) Inability to conduct orderly hearings;

(4) Inability to conduct hearing in conformity with the federal and state laws and regulations regarding special education;

(5) Improper ex parte contacts;

(6) Violations of due process requirements;

(7) Mental or physical incapacity;

(8) Unjustified refusal to accept assignments;

(9) Failure to complete training requirements as outlined by the Virginia Department of Education; or

(10) Professional disciplinary action.

b. When one or more of the allegations outlined in subdivision 3.a. of this subsection have been established by the Virginia Department of Education, the Special Education Hearing Officer may be removed from the Virginia Department of Education's list of Special Education Hearing Officers.

c. A Special Education Hearing Officer may be disqualified for a specific case.

(1) A Special Education Hearing Officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by applicable rules governing the practice of law in Virginia.

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(2) Any party may request disqualification of a Special Education Hearing Officer by filing an affidavit with the Virginia Department of Education prior to taking evidence at a due process hearing.

(a) The affidavit shall state, with particularity, the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

(b) The Special Education Hearing Officer shall provide a response no less than 10 calendar days prior to the due process hearing. No oral hearing is permitted.

(c) The filing of such an affidavit shall not stay the proceedings or filing requirements in any way except the due process hearing may not be held.

(d) If the Virginia Department of Education determines that the Special Education Hearing Officer is not disqualified, the due process hearing shall proceed as scheduled.

(e) If the Special Education Hearing Officer is disqualified, the Virginia Department of Education shall appoint a new Special Education Hearing Officer so that the hearing can proceed as scheduled whenever possible.

4. Reviewing and analyzing the decisions of Special Education Hearing Officers, and the requirement for Special Education Hearing Officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect

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names or conflicting data, but not errors of law which are reserved for appellate review.

C. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the Special Education Hearing Officer determines the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because:

   a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or

   b. The local educational agency withheld information that it was required to provide under the IDEA.

34 CFR §§ 300.507(b); 300.511(e) & (f)

2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a local educational agency may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child.

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34 CFR §§ 300.300(a)(3)(i); 300.300(b)(3)

3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with:

a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or

b. Any decision regarding placement under the disciplinary procedures.

34 CFR § 300.532

4. In circumstances involving disciplinary actions, the local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

34 CFR § 300.532

D. Procedure for requesting a due process hearing.

1. A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education.

a. If the local educational agency initiates the due process hearing, the local educational agency shall advise the parent(s) and the Virginia Department of Education in writing of this action.

b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and forward a copy of the

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request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

a. The name of the child;

b. The address of the residence of the child (or available contact information in the case of a homeless child);

c. The name of the school the child is attending;

d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice notifies the Special Education Hearing Officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2. of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the Special Education Hearing Officer within 15 calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department

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of Education.

5. Within 5 calendar days of receipt of the notification challenging the sufficiency of the due process notice, the Special Education Hearing Officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2. of this subsection.

6. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed as described in subdivision 2. of this subsection.

   a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.

7. The local educational agency shall upon receipt of a request for a due process hearing, inform the parent(s) of the availability of mediation described in 8 VAC 20-81-190 and of any free or low-cost legal and other relevant services available in the area. The local educational agency also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

34 CFR §§ 300.504(a)(2); 300.507; 300.508; 300.511

E. Amendment of Due Process Notice.

1. A party may amend its due process notice only if:

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a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting;

b. The Special Education Hearing Officer grants permission, except that the Special Education Hearing Officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.

2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

34 CFR § 300.508(d)(3)

F. Assignment of the Special Education Hearing Officer.

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:

a. The local educational agency shall contact the Virginia Department of Education for the appointment of the Special Education Hearing Officer.

b. The Virginia Department of Education contacts the Special Education Hearing Officer to confirm availability, and upon acceptance, notifies the local educational agency of the appointment.

c. The local educational agency notifies the Special Education Hearing Officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.

2. Upon request, the Virginia Department of Education shall share information on the qualifications of the Special Education Hearing Officer with the parent(s) and

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the local educational agency.

3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the Special Education Hearing Officer.

   a. If the Special Education Hearing Officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an objection with the Virginia Department of Education. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.

   b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Virginia Department of Education issues a decision on the request in accordance with the Virginia Department of Education's procedures.

   c. If a Special Education Hearing Officer recuses himself or is otherwise disqualified, the Virginia Department of Education ensures that another Special Education Hearing Officer is promptly appointed.

4. A hearing shall not be conducted by a person who:

   a. Has a personal or professional interest which would conflict with that person's objectivity in the hearing;

   b. Is an employee of the Virginia Department of Education or the local

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educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a Special Education Hearing Officer.

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. A Special Education Hearing Officer shall:

a. possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

b. possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

c. possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

34 CFR § 300.511

G. Duration of the Special Education Hearing Officer's authority.

1. The Special Education Hearing Officer's authority begins with acceptance of the case assignment.

2. The Special Education Hearing Officer has authority over a due process proceeding until:

a. Issuance of the Special Education Hearing Officer's decision;

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b. The Virginia Department of Education revokes such authority by removing or disqualifying the Special Education Hearing Officer.

H. Child's status during administrative or judicial proceedings.

1. Except as provided in 8 VAC 20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise; or

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings; or

3. If the decision of a Special Education Hearing Officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1. of this section; or

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8 VAC 20-81-160; or

5. The child’s placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8 VAC 20-81-150.

6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the

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child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

34 CFR §§ 300.518; 300.533

I. Rights of parties in the hearing.

1. Any party to a hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and request that the Special Education Hearing Officer compel the attendance of witnesses;

c. Move that the Special Education Hearing Officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

a. At least five business days prior to a hearing, each party shall disclose to all

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other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and

b. A Special Education Hearing Officer may bar any party that fails to comply with subdivision a. of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

a. A parent(s) involved in a hearing shall be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).

COV § 22.1-214(C); 34 CFR § 300.512

J. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall:

1. Maintain and monitor the due process hearing system and establish procedures for its operation;

2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

3. Develop and disseminate a model form to be used by the parent(s) to give notice in accordance with the contents of the notice listed in subdivision C.2. of this section;

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4. Maintain and ensure that each local educational agency maintains a list of persons who serve as Special Education Hearing Officers. This list shall include a statement of the qualifications of each Special Education Hearing Officer;
5. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information; and
6. Ensure that noncompliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

34 CFR §§ 300.513(d); 300.509; 300.511.

K. Responsibilities of the parent. In a due process hearing, the parent(s) shall:

1. Decide whether the hearing will be open to the public;
2. Make timely and necessary responses to the Special Education Hearing Officer personally or through counsel or other authorized representatives;
3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the Special Education Hearing Officer;
4. Provide information to the Special Education Hearing Officer to assist in the Special Education Hearing Officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the Special Education Hearing Officer.

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34 CFR § 300.512

L. Responsibilities of the local educational agency. The local educational agency shall:

1. Maintain a list of the persons serving as Special Education Hearing Officers. This list shall include a statement of the qualifications of each Special Education Hearing Officer;
2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;
3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s') first request for a due process hearing in a school year;
4. Inform the parent(s) at the time the request is made of the availability of mediation;
5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;
6. Assist the Special Education Hearing Officer, upon request, in securing the location, transcription, and recording equipment for the hearing;
7. Make timely and necessary responses to the Special Education Hearing Officer;
8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the Special Education Hearing Officer;
9. Upon request, provide information to the Special Education Hearing Officer to assist in the Special Education Hearing Officer's administration of the hearing;
10. Provide documents and exhibits necessary for the hearing within required

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timelines;

11. Comply with timelines, orders, and requests of the Special Education Hearing Officer;
12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;
13. Forward all necessary communications to the Virginia Department of Education and parties as required;
14. Notify the Virginia Department of Education when a Special Education Hearing Officer's decision has been appealed to court by either the parent(s) or the local educational agency;
15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed; and
16. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the Special Education Hearing Officer's decision.

34 CFR §§ 300.504; 300.506; 300.507; 300.511

M. Responsibilities of the Special Education Hearing Officer. The Special Education Hearing Officer shall:

1. Within five business days of agreeing to serve as the Special Education Hearing Officer, secure a date, time, and location for the hearing that are convenient to

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both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing;

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The Special Education Hearing Officer shall send copies of correspondence to the parties or their attorneys;
3. Conduct a prehearing conference via a telephone conference call or in person unless the Special Education Hearing Officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the Special Education Hearing Officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;
4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the Special Education Hearing Officer deems such conference unnecessary, the Special Education Hearing Officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference.
5. At the pre-hearing stage:
   a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case; and
   b. Document in writing to the parties, with copy to the Virginia Department of

Education, pre-hearing determinations including a description of the right to appeal the case directly to either a state or federal court;

6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;
7. Ascertain from the parent(s) whether the hearing will be open to the public;
8. Ensure that the parties have the right to a written or, at the option of the parent(s), an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision;
9. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing;
10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8 VAC 20-81-220 when the parent(s) or guardian is not available or cannot be located;
11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing;
12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The Special Education Hearing Officer may permit parties to submit briefs, upon the parties' request;
13. Base findings of fact and decisions solely upon the preponderance of the

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evidence presented at the hearing and applicable state and federal law and regulations;

14. Report findings of fact and decisions in writing to the parties but if a party is represented by an attorney, then to their attorney, and the Virginia Department of Education. If the hearing is an expedited hearing, the Special Education Hearing Officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within ten school days of the hearing being held;

15. Include in the written findings:

    a. Findings of fact relevant to the issues that are determinative of the case;

    b. Legal principles upon which the decision is based, including references to controlling case law, statues, and regulations;

    c. An explanation of the basis for the decision for each issue that is determinative of the case; and

    d. If the Special Education Hearing Officer made findings which required relief to be granted, then an explanation of the relief granted may be included in the decision;

16. Subject to the procedural determinations described in subdivision L.17. of this section, the decision made by a Special Education Hearing Officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education;

17. In matters alleging a procedural violation, a Special Education Hearing Officer may find that a child did not receive a free appropriate public education only if the

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procedural inadequacies:

a. Impeded the child's right to a free appropriate public education;

b. Significantly impeded the parent's(s') opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or

c. Caused a deprivation of educational benefits.

d. Nothing in this subdivision shall be construed to preclude a Special Education Hearing Officer from ordering a local educational agency to comply with procedural requirements under 34 CFR §§ 300.500 through 300.536;

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case; and

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8 VAC 20-81-160.

34 CFR §§ 300.515; 300.511; 300.513; 300.532

N. Authority of the Special Education Hearing Officer. The Special Education Hearing Officer has the authority to:

1. Exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;

2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior

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to the hearing without the consent of the other party;

3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence.
   a. The Special Education Hearing Officer shall rule on any party's motion to quash or modify a subpoena. The Special Education Hearing Officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.
   b. The Special Education Hearing Officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.
   c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the Special Education Hearing Officer does not quash or modify the subpoena after objection.
4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;
5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the Special Education Hearing Officer's rules and with relevant laws and regulations;
6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;
7. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action

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shall not be used to deprive the parties of their rights and shall be exercised only when the Special Education Hearing Officer determines that the best interests of the child will be served;

8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8 VAC 20-81-170;

9. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The Special Education Hearing Officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education;

   a. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the Special Education Hearing Officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension.

10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the Special

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Education Hearing Officer's orders;

11. Set guidelines regarding media coverage if the hearing is open to the public;

12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and

13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

a. The hearing shall occur within 20 school days of the date the due process notice is received. The Special Education Hearing Officer shall make a determination within 10 school days after the hearing.

b. Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.

c. Once a determination is made, the Special Education Hearing Officer may:

(1) Return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the

removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the Special Education Hearing Officer determines that maintaining the current placement of the child is substantially likely to result in injury to the a child or to others.

COV 22.1-214(B); 34 CFR §§ 300.515; 300.512; 300.532

O. Timelines for nonexpedited due process hearings.

1. Resolution meeting.

a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:

(1) Includes a representative of the local educational agency who has decision-making authority on behalf of the local educational agency; and

(2) May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.

b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute

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that is the basis for the due process request.

c. The meeting described in subdivisions 1.a. and 1.b. of this subsection need not be held if:

(1) The parent and the local educational agency agree in writing to waive the meeting; or

(2) The parent and the local educational agency agree to use the mediation process described in this chapter.

d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.

2. Resolution period.

a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.

b. Except as provided in subdivision 3. of this subsection, the timeline for issuing a final decision begins at the expiration of this 30 calendar day period.

c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2.a. and 2.b. of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.

d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made

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(and documented as required to gain parental consent), the local educational agency may at the conclusion of the 30 calendar day period, request that a Special Education Hearing Officer dismiss the parent's due process request.

e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1.a. of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a Special Education Hearing Officer to begin the due process hearing timeline.

3. Adjustments to 30 calendar day resolution period. The 45 calendar day timeline for the due process starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30 calendar day period, the parties agree in writing that no agreement is possible; or

c. If both parties agree in writing to continue the mediation at the end of the 30 calendar day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1.a. and 1.b. of this subsection, the parties shall execute a legally binding agreement that is:

a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and

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b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.

5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4. of this subsection, a party may void the agreement within three business days of the agreement's execution.

6. The Special Education Hearing Officer shall ensure that, not later than 45 calendar days after the expiration of the 30 calendar day period under subdivision 2. or the adjusted time periods described in subdivision 4. of this subsection:

a. A final decision is reached in the hearing; and

b. A copy of the decision is mailed to each of the parties.

7. The Special Education Hearing Officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.

9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45 day timeline for the Special Education Hearing Officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30 day resolution process is still applicable.

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34 CFR §§ 300.510; 300.515

P. Timelines for expedited due process hearings.

1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The Special Education Hearing Officer shall make a determination within 10 school days after the hearing.
2. Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process described in 8 VAC 20-81-190:
   a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint; and
   b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

34 CFR § 300.532(c)

Q. Costs of due process hearing and attorneys' fees.

1. The costs of an independent educational evaluation, Special Education Hearing Officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.
2. The local educational agency is responsible for its own attorneys' fees.

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3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.

4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.

5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8 VAC 20-81-310.

34 CFR § 300.517

R. Right of appeal.

1. A decision by the Special Education Hearing Officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Act without regard to the amount in controversy.

2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be

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appropriate.

3. If the Special Education Hearing Officer's decision is appealed in court, implementation of the Special Education Hearing Officer's order is held in abeyance except in those cases where the Special Education Hearing Officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection G. of this section. In those cases, the Special Education Hearing Officer's order shall be implemented while the case is being appealed.

4. If the Special Education Hearing Officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8 VAC 20-81-200.

34 CFR § 300.516

S. Nothing in this chapter prohibits or limits rights under other federal laws or regulations.

34 CFR § 300.516

8 VAC 20-81-220. Surrogate parent procedures.

A. Role of surrogate parent. The surrogate parent appointed in accordance with this section represents the child in all matters relating to the identification, evaluation, or educational placement of the child; or the provision of a free appropriate public education to the child.

34 CFR § 300.519(g)

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B. Appointment of surrogate parents.

1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

a. The biological parent(s) or guardians are allowing relatives or private individuals to act as a parent;

b. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with §§ 16.1-283, 16.1-277.01, or 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent of the child for the purposes of any special education proceedings.

c. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 63.2-908 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

2. The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when:

a. No parent, as defined in 8 VAC 20-81-10, can be identified;

b. The local educational agency, after reasonable efforts, cannot discover the

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whereabouts of a parent;

c. The child is a ward of the state; or

d. The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC § 1143a(6)) and the Code of Virginia § 22.1-3.

34 CFR § 300.519(a)

3. The local educational agency shall appoint a surrogate parent as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8 VAC 20-81-180 C.3. or C.4. and no family member is available to serve as the child's educational representative.

4. If the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child. The appointed surrogate shall meet the requirements of subdivision D.1.c. of this section.

34 CFR § 300.519(c)

5. The local educational agency shall establish procedures for determining whether a child needs a surrogate parent.

34 CFR § 300.519(b)

6. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee within 30 calendar days

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of the determination that a surrogate parent is necessary.

a. The appointment having been effected, the local educational agency shall notify in writing:

(1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;

(2) The surrogate parent-appointee; and

(3) The person charged with responsibility for the child.

b. The surrogate parent serves for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.

c. If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.

d. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.

34 CFR §§ 300.519(b) & (h)

7. Each local educational agency shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of

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appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8 VAC 20-81-180;

b. The child is found no longer eligible for special education services;

c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;

d. The parent(s), whose whereabouts were previously unknown, are now known and available; or

e. The appointed surrogate parent is no longer eligible according to subsection D. of this section.

C. Identification and recruitment of surrogate parents.

1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.

2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate

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eligibility. Other factors which warrant the local educational agency's attention include:

a. Consideration of the appointment of a relative to serve as surrogate parent;

b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

c. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and

d. The appropriateness of the child's participation in the selection of the surrogate parent.

D. Qualifications of surrogate parents.

1. The local educational agency shall ensure that a person appointed as a surrogate:

a. Has no personal or professional interest that conflicts with the interest of the child;

b. Has knowledge and skills that ensure adequate representation of the child;

c. Is not an employee of the Virginia Department of Education, the local educational agency, or any other agency which is involved in the education or care of the child; and

d. Is of the age of majority.

2. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

3. If the child is an unaccompanied homeless youth, appropriate staff of an

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emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency which is involved in the education or care of the child. The temporary surrogate shall otherwise meet the qualifications of a surrogate, and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.

34 CFR §§ 300.519(d), (e), & (f)

E. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter.

34 CFR § 300.519(g)

8 VAC 20-81-230. Local educational agency administration and governance.

A. The local educational agency shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.

B. Plans, applications, and reports.

1. The local educational agency shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:

a. Assurances that the local educational agency has in effect policies and

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procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;

b. A report indicating the extent to which the annual plan for the preceding period has been implemented;

c. Budgets, outlining the use of the federal funds; and

d. A copy of the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision H.2. of this section.

2. Prior to submission to the Virginia Department of Education, the annual plan shall be reviewed by the local school division's local advisory committee, and approved by the local school board. State-operated programs, the Virginia School for the Deaf and Blind at Staunton, and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.

3. The local educational agency shall ensure that the annual plan, and all required special education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.

COV § 22.1-215; 34 CFR §§ 300.200; 300.212

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C. Provision of or payment for special education and related services.

1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.

2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1. of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21. of 8 VAC 20-81-20.

34 CFR § 300.154(b)

D. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent.

1. Membership.

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a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.

b. The committee shall include representation of gender and the ethnic population of the local school division.

2. The functions of the local advisory committee shall be as follows:

a. Advise the local school division of needs in the education of children with disabilities;

b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;

d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;

e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and

f. Participate in the review of the local school division's annual plan, as outlined in subsection B.2. of this section.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

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4. Committee meetings shall be held at least four times in a school year and shall be open to the public.

F. Regional special education programs.

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8 VAC 20-81-130.

2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services which are approved by the joint board.

COV § 22.1-218; Jointly Owned and Operated Schools and Jointly Operated Programs (8 VAC 20-280-10 et seq.)

G. Transition from infant and toddler programs to early childhood special education programs.

1. Children who are participating in early intervention programs under Part C of the

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Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with 34 CFR § 303.148(b).

3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:

a. the child meets the Part B eligibility criteria; and

b. an IEP has been developed and signed by the parent(s).

34 CFR § 300.124

H. Programs for children with disabilities in regional or local jails.

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.

2. Each local school division with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special

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education and related services in the jail. A copy of this agreement shall be submitted with the annual plan specified in subsection B. of this section.

34 CFR § 300.121; 300.122

I. Each local educational agency shall cooperate with the U.S. Department of Education's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

34 CFR § 300.213

J. Early Intervening Services. Each local educational agency shall implement early intervening services in accordance with the provisions of 8 VAC 20-81-260 H.

34 CFR § 300.226

K. Access to Instructional Materials

1. Each local educational agency shall ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner.

34 CFR § 300.172(b) & (c)

2. To meet the requirements of subdivision K.1. of this section for blind persons or other persons with print disabilities, the local educational agency may coordinate with the National Instructional Materials Access Center (NIMAC).

a. The local educational agency shall provide an assurance to the Virginia Department of Education that the local educational agency will provide

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instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B. of this section.

b. Each local educational agency shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.

c. If the local educational agency coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

34 CFR § 300.172(c)

d. The requirements of subdivision K.2.c. of this section shall apply to print instructional materials published after July 19, 2006.

34 CFR § 300.172(a)

3. Nothing in this subsection relieves a local educational agency of its responsibility to ensure that children with disabilities who need instructional materials in

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accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

34 CFR § 300.172(b)

4. Definitions applicable to this subsection.

a. The term "timely manner" has the same meaning as the defined in 8 VAC 20-81-10shall.

b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria:

(1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;

(2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;

(3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or

(4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their

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reading printed material in a normal manner.

2 USC § 135a; 36 CFR § 701.6(b)(1); 34 CFR § 300.172(a) & (e)

c. The term "competent authority" is defined as follows:

(1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.

2 USC § 135a; 36 CFR § 701.6(b)(2)

e. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or the local educational agency for use by students in the classroom.

20 USC § 1474(e)(3)(C)

f. The term "specialized formats" has the meaning given the term in 17 USC § 121(d)(3), and means Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.

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20 USC § 1474(e)(3)(D)

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PART IV.

FUNDING.

8 VAC 20-81-240. Eligibility for funding.

A. Each local school division and state-operated program shall maintain current policies and procedures and supporting documentation to demonstrate compliance with the Act and the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures shall be made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance.

34 CFR § 300.220

B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

8 VAC 20-81-250. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

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1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality.

COV § 22.1-253.13:1 et seq.

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement is made in the year following delivery of instruction.

Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et seq.)

C. Children with disabilities enrolled in regional special education programs:

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the Virginia Board of Education.

2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.

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COV §§ 22.1-211; 22.1-218

D. Applicability of least restrictive environment and FAPE provision in state funded placements. No state funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise result in a failure to provide a child with a disability a free appropriate public education.

34 CFR § 300.114(b)

E. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions are reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails.

Virginia Appropriation Act

F. Funds under the Comprehensive Services Act for At-Risk Youth and Families.

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential

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placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a Special Education Hearing Officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

COV §§ 2.2-5211 through 2.2-5212

G. Reimbursement shall be made for the education of children with disabilities who:

1. Have been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency;

2. Have been placed in an orphanage or children's home, which exercises legal rights; or

3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child-caring institution or group home licensed in accordance with the Code of Virginia.

COV § 22.1-101.1(B) & (C)

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8 VAC 20-81-260. Federal funds.

A. In accordance with the provisions of the Act, the Virginia Department of Education disburses the federal funds that are available under Part B of the Act to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. The local educational agency shall submit an annual plan to the Virginia Department of Education describing the use of such funds in accordance with section B. of 8 VAC 20-81-230.

34 CFR § 300.200; 34 CFR § 76.301

B. Excess costs means those costs that are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student as may be appropriate, and that shall be computed after deducting:

1. amounts received under Part B of the Act,
2. amounts received under Part A of title I of the ESEA,
3. amounts received under Parts A and B of title III of the ESEA,
4. any state or local funds expended for programs that would qualify for assistance under any of the parts described in 1., 2., or 3., but excluding any amounts for capital outlay and debt service.

A local educational agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities in state and local funds before funds under Part B of the Act are used. (See 34 CFR Part 300, Appendix A for an example of how excess costs shall be calculated.)

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34 CFR §§ 300.16; 300.202; and Appendix A

C. A local educational agency complies with the maintenance of effort requirement in establishing its eligibility for an award in a fiscal year if the local educational agency budgets the same total or per capita amount in state and local funds as it spent from the same sources to educate children with disabilities in the most recent prior year for which information is available.

34 CFR § 300.203

D. Part B funds may be used to supplement, but shall not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Act .

34 CFR §§ 300.202; 300.203; 300.204

E. The amount of Part B funds determined to be available for each local educational agency is based upon the formulas specified under the Act .

34 CFR §§ 300.705; 300.816

F. A local educational agency may use Part B funds to implement a schoolwide program under § 1114 of the ESEA, except that the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B

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funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency shall ensure that all children with disabilities in schoolwide program schools:

1. Receive services in accordance with a properly developed IEP; and

2. Are afforded all of the rights and services guaranteed to children with disabilities under the Act .

34 CFR § 300.206

G. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child.

34 CFR § 300.208

H. Early Intervening Services

1. Children who are not currently identified as needing special education or related services may need additional academic and behavioral supports to succeed in a general education environment. These supports may be in the form of early intervening services.

a. Early intervening services apply to children in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three.

2. To develop and implement coordinated, early intervening services, which may include interagency financing structures, a local school division may not use more than 15 percent of the amount the school division receives under Part B of

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the Act for any fiscal year. The 15 percent is less any amount reduced by the local school division pursuant to 34 CFR § 300.205, if any, in combination with other amounts (which may include amounts other than education funds).

3. In implementing coordinated, early intervening services under this section, a local educational agency may carry out activities that include:

a. Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

4. Nothing in this section shall be construed to either limit or create a right to a free appropriate public education under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

5. Each LEA that develops and maintains coordinated, early intervening services under this section shall annually report to the Virginia Department of Education on:

a. The number of children served under this section who received early intervening services; and

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b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

5. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

6. The amount of funds expended by a local educational agency for early intervening services shall count toward the maximum amount of expenditures that the LEA may reduce when determining compliance with the requirement for maintenance of effort.

34 CFR § 300.226

8. If the Virginia Department of Education determines significant disproportionality based on race and ethnicity is occurring in a local educational agency in the identification of children with disabilities, or the placement of identified children in a particular educational setting, the local educational agency shall

a. Use 15 percent of its Part B funds to provide comprehensive coordinated early intervening services particularly, but not exclusively, to those groups that were significantly over-identified; and

b. Publicly report on the revision of policies, practices, and procedures used in the identification and placement of children with disabilities.

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34 CFR §§ 300.226; 300.646

I. If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Act that are not needed by the school division to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

34 CFR §§ 300.705; 300.817

8 VAC 20-81-270. Funds to assist with the education of children with disabilities residing in state-operated programs.

A. State mental health facilities. State funds for education for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Act.

Virginia Appropriation Act; 34 CFR § 300.705

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B. State training centers for the mentally retarded. State funds for special education and related services for children with disabilities in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Act.

Virginia Appropriation Act; 34 CFR § 300.705

C. State specialized children's hospitals. State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act.

Virginia Appropriation Act; 34 CFR § 300.705

D. Woodrow Wilson Rehabilitation Center. State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act.

Virginia Appropriation Act; 34 CFR § 300.705

E. Regional and local juvenile detention homes. State funds for education services are appropriated to the Virginia Department of Education.

Virginia Appropriation Act; 34 CFR § 300.705

F. State-operated diagnostic clinics. State funds for the employment of educational

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consultants assigned to child development and other specialty clinics operated by the state Department of Health are appropriated to the Virginia Department of Education.

Virginia Appropriation Act; 34 CFR § 300.705

G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of the Act.

Virginia Appropriation Act; 34 CFR § 300.705

H. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton. State funds are appropriated directly to these schools to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the Virginia schools shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the Virginia schools.

Virginia Appropriation Act; 34 CFR § 300.705

I. Regional and local jails. State funds for education services are appropriated to the

Virginia Department of Education.

Virginia Appropriations Act; 34 CFR § 300.705

8 VAC 20-81-280. Funding, withholding, and recovery of funds.

A. The Virginia Department of Education shall disburse funds to local educational agencies for the education of children with disabilities, aged two to 21, inclusive, when they provide documentation of compliance with state and federal laws and regulations.

34 CFR § 300.200

B. If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall provide reasonable notice to the local educational agency that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the local educational agency shall be given an opportunity to submit a written response; and

2. The local educational agency shall have the right to appeal to the Virginia Board of Education under 8 VAC 20-81-290.

34 CFR §§ 300.155; 300.221;

C. Whenever the Virginia Board of Education, in its discretion, determines that a local educational agency fails to establish and maintain programs of free and appropriate public education which comply with the regulations established by the Board, the

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Board may withhold all state and federal funds for the education of eligible children with disabilities and may use the payments which would have been available to such local educational agency to provide special education, directly or by contract, to eligible children with disabilities in such manner as the Board considers appropriate.

COV § 22.1-214(E)

D. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8 VAC 20-81-290, finds that a local educational agency has failed to comply with the state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that local educational agency until it complies with the state and federal laws and regulations.

34 CFR §§ 300.155; 300.222

E. If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the local educational agency, the foregoing due process procedures shall apply.

34 CFR §§ 300.155; 300.221; 300.222

F. If it is determined that such funds have been erroneously claimed, the Virginia Department of Education shall bill the local educational agency for the amount of funds improperly received and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency.

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34 CFR §§ 300.155; 300.221; 300.222

G. Any local educational agency in receipt of a notice, as described in section C., shall provide public notice to the local educational agency's jurisdiction regarding pendency of the action.

34 CFR § 300.222

8 VAC 20-81-290. Appeal of administrative decision regarding funding.

A. The Virginia Department of Education's recommendation to disapprove local eligibility for funding under the Act, or withhold state and federal funds for special education and related services, may be appealed by a local educational agency.

34 CFR §§ 76.401; 300.155

B. The procedures for the appeal of administrative decisions are as follows:

1.The local educational agency shall request, in writing, a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the local educational agency in writing of the date, time, and location of the hearing;

3. The hearing shall be conducted within 15 business days from the date of notification;

4. The hearing shall be conducted by an independent hearing officer in conformance with the provisions of the Code of Virginia, §§ 2.2-4020 and 2.2-4024;

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5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or the local educational agency;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing officer shall review all pertinent evidence presented and shall render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;

8. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;

9. The decision made by the hearing officer shall be final unless an appeal is requested by a local educational agency;

10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department General Administrative Regulations; and

11. Notice of appeal shall be filed within 20 days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

34 CFR §§ 76.401; 300.155

8 VAC 20-81-300. Use of public and private insurance.

A. Children with disabilities who are covered by public benefits or insurance.

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1. A local educational agency may use Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public benefits or insurance program except as provided in subdivision 2. of this subsection.

2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. Shall provide notice to the parent(s) that the local educational agency:

(1) May not require the parent(s) to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;

(2) May not require the parent(s) to incur any out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with subsection C. of this section may pay the cost that the parent(s) otherwise would be required to pay; and

(3) May not use a child's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(c) Increase premiums or lead to the discontinuation of benefits insurance;

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or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

b. Shall obtain informed parental consent each time that access to public benefits or insurance is sought, including parental consent to release educational information to the public benefits of insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.); and

c. Shall provide notice to the parent(s) that refusal to allow access to their public benefits or insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

34 CFR § 300.154(d)

B. Children with disabilities who are covered by private insurance.

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, a local educational agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the local educational agency proposes to access a parent's private insurance proceeds, it shall:

a. Obtain informed parental consent, including parental consent to release educational information to the private insurance program for billing purposes

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in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.); and

b. Inform the parent(s) that the refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

34 CFR § 300.154(e)

C. Use of Part B funds.

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent(s) would incur a cost for a specified service required under this chapter to ensure a free appropriate public education, the local educational agency may use its Part B funds under the Act to pay for the service.

2.To avoid financial cost to a parent who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's insurance (e.g., deductible or co-pay amounts).

34 CFR § 300.154(f)

D. Proceeds from public or private insurance.

1. Proceeds from public benefits or insurance or private insurance is not treated as

program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds are not considered state or local funds for purposes of the maintenance of effort provisions.

34 CFR §§ 80.25; 300.154(g)

E. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public benefits or insurance program by federal law, regulations, or policy under title XIX or title XXI of the Social Security Act, or any other public benefits or insurance program.

34CFR § 300.154(h)

8 VAC 20-81-310. Attorneys' fees.

A. In any action or proceeding brought under § 1415 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs:

1. To the prevailing party who is the parent(s) of a child with a disability;

2. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

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3. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent, or against the parent, if the parent's request for a due process hearing, or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

34 CFR § 300.517(a)

B. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under § 1415 and Subpart E of the Act. This section does not preclude a local educational agency from using funds under the Act for conducting an action or proceeding under § 1415 of the Act.

34 CFR § 300.517(b)

C. A court awards reasonable attorneys' fees under § 1415 of the Act consistent with the following:

1. Determination of amount of attorneys' fees. Fees awarded under § 1415 of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

2. Prohibition of attorneys' fees and related costs for certain services.

a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under § 1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent(s) if:

(1) The offer is made within the time prescribed by Rule 68 of the Federal

Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 calendar days before the proceeding begins;

(2) The offer is not accepted within 10 calendar days; and

(3) The court or administrative Special Education Hearing Officer finds that the relief finally obtained by the parent(s) is not more favorable to the parent(s) than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation session.

c. A resolution session convened in accordance with 8 VAC 20-81-210 will not be considered:

(1) A meeting convened as a result of an administrative hearing or judicial action; or

(2) An administrative hearing or judicial action for purposes of this subsection.

3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2. of this subsection, an award of attorneys' fees and related costs may be made to a parent(s) who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5. of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:

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a. The parent(s), or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. The attorney representing the parent(s) did not provide to the local educational agency the appropriate information in the request for a due process hearing in accordance with this chapter.

5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4. of this subsection do not apply in any action or proceeding if the court finds that the Virginia Department of Education or the local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of § 1415 of the Act .

34 CFR § 300.517(c)

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PART V.

ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH DISABILITIES IN RESIDENCE OR CUSTODY.

8 VAC 20-81-320. Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education which is comparable to that provided to children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice.

COV §§ 22.1-7; 22.1-340

b. The Superintendent of Public Instruction shall approve the education programs

at the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

COV §§ 22.1-7; 22.1-347; 22.1-348

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities.

COV § 22.1-7

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services.

COV §§ 22.1-7; 22.1-209.2

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes.

COV §§ 22.1-7; 22.1-209.2

f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Eastern Virginia Medical Center, the Virginia Commonwealth University Health System Authority, and The University of Virginia Hospitals.

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COV §§ 22.1-7; 22.1-209.2

2. The procedures outlined in 8 VAC 20-81-230 are applicable to each state board, agency, and institution having children with disabilities in residence and custody.

COV § 22.1-7

B. Annual program plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8 VAC 20-81-230. In addition, the program plan shall include the following:

1. The educational objectives of the state board, agency, or institution;

2. Strategies for achieving the educational objectives, including an organized program for staff development;

3. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;

4. A system of communication to ensure service continuity in the transition of the student into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia;

COV §§ 16.1-293; 22.1-289(E)

5. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

6. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;

7. A cooperatively developed procedure for the evaluation of educational personnel;

8. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board;

9. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each student to implement the student's IEP.

a. If a student has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

b. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and personnel from the following facilities shall file statements of concurrence:

(1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;

(2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions -- the

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Department of Correctional Education;

(3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton;

(4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;

(5) The attending physician -- state medical facilities;

(6) The detention superintendent or designee -- juvenile detention homes.

10. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall provide for each age group of children a planned dormitory and a student-life program, including social and daily living skills, recreation, and cultural activities.

C. Staff and facility.

1. Each state board, agency or institution shall assign personnel to the educational program who are appropriately and adequately prepared and trained, including having the knowledge and skills to service children with disabilities, and as follows:

a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

b. Additional education personnel to provide required related services as

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delineated in the child's IEP.

c. Paraprofessionals who are trained and supervised in accordance with the requirements of the Board of Education.

34 CFR § 300.156

2. Each state board, agency or institution shall staff the educational program as follows:

a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;

b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

(1) Emotional disturbance - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(3) Mental retardation - one teacher and one paraprofessional for every 10 children;

(4) Severe disability - one teacher and one paraprofessional for every six

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children or one teacher and two paraprofessionals for every 10 children;

(5) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;

(6) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(7) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(8) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(9) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(10) Autism - one teacher for every six children or one teacher and one paraprofessional for every eight children;

(11) Traumatic brain injury - students may be placed in any program, according to the student's IEP;

(12) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;

(13) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children;

(14) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of students exceeds the bed

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capacity, then the ratio shall be one teacher for every 12 students based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

3. Each facility shall have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

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PART VI.

COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973,

AS AMENDED.

8 VAC 20-81-330. Compliance with § 504 of the Rehabilitation Act of 1973, as amended.

A. Each state-operated program providing educational services to persons of school age, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan.

34 CFR § 104.33

B. Local educational agencies are required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. In meeting the due process portion of this requirement, local educational agencies may utilize the due process hearing system specified in 8 VAC 20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability. If this procedure is selected, the local school system is responsible for 100 percent of the reimbursement costs to the Special Education Hearing Officer and any other costs incurred and requested by the Special Education Hearing Officer or school

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division. The Virginia Department of Education trains Special Education Hearing Officers on 504 requirements.

34 CFR §§ 104.7; 104.36

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Appendix A

Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act.

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	8	6	24
Deaf-blindness	8	6	
Developmental Delay: age 5-8	10	8	
Developmental Delay: age 2-5	8 Center-based 10 Combined	12 Home-based and/or Itinerant	
Emotional Disturbance	10	8	24
Hearing Impairment/ Deaf	10	10	24
Learning Disability	10	10	24
Mental Retardation	10	10	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	10	24
Other Health Impaired	10	10	24
Severe Disabilities	8	6	
Speech or Language Impairment			68 (Itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services	20 Points (see Figure 2)		

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Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

	Level II Values		Level I
Disability Category	**With Paraprofessional 100% of the time**	**Without Paraprofessional 100% of the time**	**Values**
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental Delay: age 5 - 8	2.0	2.5	1
Emotional Disturbance	2.0	2.5	1
Hearing Impairment/Deaf	2.0	2.5	1
Learning Disability	2.0	2.5	1
Mental Retardation	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
Severe Disabilities	2.0	2.5	1
Traumatic Brain Injury	2.0	2.5	1

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Board of Education Agenda Item

Item: B. **Date:** September 26, 2007

Topic: Final Review of Proposed Revisions to the Standards for Interdepartmental Regulation of Children's Residential Facilities

Presenter: H. Douglas Cox, Assistant Superintendent of Special Education and Student Services

Telephone Number: (804) 225-2715 **E-Mail Address:** Doug.Cox@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
- _X_ State or federal law or regulation
- ____ Board of Education regulation
- ____ Other: _____

_X_ Action requested at this meeting ____ Action requested at future meeting: _____(date)

Previous Review/Action:

___ No previous board review/action

_X_ Previous review/action
date March 29, 2007

action The Board waived first review and approved the proposed revisions to the standards which resulted in repeal of 22 VAC 42-10 and adoption of 22 VAC 42-11

Background Information:

The state Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Juvenile Justice; and Social Services are the promulgating entities for the proposed regulation. The four licensing agencies and representatives of residential facilities developed the Interdepartmental Standards for use in regulating children's residential facilities. These standards are designed to provide protection and treatment/programming to vulnerable children in out-of-home care.

This is a joint action to repeal 22 VAC 42-10 and adopt a new regulation, 22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities. The standards apply to all children's residential facilities licensed or certified by the four licensing agencies. The changes made to this regulation reflect changes to the children's residential facility industry in recent years, and in federal requirements regarding record keeping and behavior management. The changes also incorporate the requirements found in Chapters 168 and 781 of the 2006 Acts of Assembly. The new regulation replaces an emergency regulation. Substantive changes address: changes in the types of licenses issued in response to compliance issues; summary suspensions; staff training requirements and qualifications; timely educational services; record keeping requirements; medication; staff supervision ratios; behavior management; recreation; emergency procedures; and community relations.

The purpose of the proposed action is to promulgate revised standards that better protect the health, safety, and welfare of vulnerable children who are separated from their families and reside in children's residential facilities. The standards will assure that an acceptable level of care and education are provided to these children. Children placed in residential care typically need a higher level of service than can be provided in a foster home. It is important that staff who supervise these children have the appropriate knowledge and experience to make decisions regarding their care. The appropriate number of trained staff on duty is needed to give the children adequate time and attention to meet their needs. Staff also need the time to plan a structured program of care for the residents and to document planning and decision-making for each resident.

There were three (3) public hearings regarding the standards for children's residential facilities. Ninety (90) individuals, including representatives of the Virginia Association of Independent Specialized Education Facilities (VAISEF), made comments representing approximately 40 facilities out of 307. Public hearings were held in Roanoke County, Richmond City, and Virginia Beach. Following the public hearings, the four promulgating entities met with the Interdepartmental Advisory Committee for review of the public comments. The comments involved staff development, qualifications, recreation, strip searches, substantial compliance, appeals, good neighbor policy, and the interdepartmental approach to monitoring facilities.

Summary of Major Elements

A summary of the substantive changes following the first review of the proposed regulation includes:

- Revised the definition of "annual" allowing the provider greater flexibility in providing annual required trainings (page 1)

- Changed the timeline to 10 days for self-reporting lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents (page 18)

- Clarified procedures for DJJ facilities by adding a new subsection A (page 18)

- Deleted the requirement to have the regulatory agency approve the decision making plan, as it was determined the approval was unnecessary (page 28)

- Added “program director” as an official representative for notifying the regulatory authority about administrative changes (page 31)

- Added language “or residency at the facility” so individuals other than staff or residents who live in the facility would also be required to have a TB evaluation (page 32)

- Added “after the effective date of these standards” to the qualifications section to ensure that all current staff would be grandfathered (page 33)

- Added “student/interns” to the personnel records of volunteers section to be consistent with other standards (page 35)

- Added the requirement for training in appropriate siting of children’s residential facilities as required by the Code of Virginia (page 38)

- Added the requirement for training in good neighborhood policies and community relations as the training is required for the applicant by the Code of Virginia (page 40)

- Requires providers to show documentation of training on good neighbor policies and community relations (page 40)

- Revised qualification requirements to offer the provider greater flexibility in hiring a qualified chief administrator officer (CAO) (page 41-42)

- Revised qualification requirements to offer the provider greater flexibility in hiring a qualified Program Director (page 43)

- Deleted the requirement for case manager to have experience working in a children’s residential facility because other administrative staff have this requirement, and it is not necessary to require this experience for the case manager (page 45)

- Revised qualifications for child care staff to allow providers to have greater flexibility in hiring child care staff (page 47)

- Changed the standard regarding video and audio monitoring to allow each regulatory agency to make the decision to permit monitoring (page 55)

- Revised standard to allow seven days to complete the screening assessment for tuberculosis as obtaining medical appoints for children is difficult (page 77)

- Deleted the requirement to record the actual time that medicine was given and to notify the

prescribing professional when a resident refuses to take prescribed medicine (page 81)

- Added language to emergency and evacuation procedures as some localities will not be able to provide special services for residential facilities (page 104)

There were no substantive changes to the proposed regulations based on the public comments.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept the additional changes and adopt the attached revisions to the Standards for Interdepartmental Regulation of Children's Residential Facilities. In addition, the Board may authorize the Department staff to make minor technical or typographic changes that do not affect the substance of the standards.

Impact on Resources:

There will be minimal financial impact on the Virginia Department of Education. Although many providers are already meeting the proposed standards, operators of facilities that currently are not meeting the revised standards may incur additional expenses.

Timetable for Further Review/Action:

The final regulation, 22 VAC 42-11, entitled the Standards for Interdepartmental Regulation of Children's Residential Facilities, and the final repeal of 22 VAC 42-10, entitled Standards for Interdepartmental Regulation of Children's Residential Facilities, were approved by the Board of Juvenile Justice on September 12, 2007. The Board of Mental Health, Mental Retardation and Substance Abuse Services will meet on October 3, 2007, and the Board of Social Services will meet on October 17, 2007.

Upon adoption, the Office for Interdepartmental Regulation will notify all licensed children's residential facilities of the changes in the standards when final approval is granted through the Administrative Process Act (APA).

Note: Some technical edits may be made to the proposed regulations prior to submission for publication under the APA.

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Final Regulation
Agency Background Document

Agency name	Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services
Virginia Administrative Code (VAC) citation	22 VAC 42-11
Regulation title	Standards for Interdepartmental Regulation of Children's Residential Facilities
Action title	Revise Standards to Meet Current Industry Practices
Date this document prepared	August 27, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This is a joint action to repeal 22 VAC 42-10 and adopt a new regulation, 22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities. The regulation applies to all children's residential facilities licensed or certified by the Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services. The changes made to this regulation reflect changes to the children's residential facility industry in recent years, and in federal requirements regarding record keeping and behavior management. The changes also incorporate the requirements found in Chapters 168 and 781 of the 2006 Acts of Assembly. The new regulation replaces an emergency regulation. Substantive changes address: changes in the types of licenses issued in response to compliance issues; summary suspensions; staff training requirements and qualifications; timely educational services; record keeping requirements; medication; staff supervision ratios; behavior management; recreation; emergency procedures; and community relations. The new regulation will better ensure that safeguards are in place to protect residents of children's residential facilities and that services are appropriate for these children.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The final regulation, 22 VAC 42-11, entitled the Standards for Interdepartmental Regulation of Children's Residential Facilities, and the final repeal of 22 VAC 42-10, entitled Standards for Interdepartmental Regulation of Children's Residential Facilities were approved by the Board of Juvenile Justice on September 12, 2007. The Board of Education will meet on September 26, 2007. The Board of Mental Health, Mental Retardation and Substance Abuse Services will meet on October 4, 2007; and the Board of Social Services will meet on October 17, 2007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Authority to promulgate the regulation is found in §§ 22.1-321, 22.1-323, 22.1-323.2, 16.1-309.9, 66-10, 66-24, 37.2-403-422, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, and 63.2-203 of the *Code of Virginia*.

The Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Juvenile Justice; and Social Services are the promulgating entities. Regulation of children's residential facilities is mandatory.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed action is to promulgate revised standards that better protect the health, safety and welfare of vulnerable children who are separated from their families and reside in children's residential facilities. The standards will assure that an acceptable level of care and education are provided to these children. Children placed in residential care typically need a higher level of service than can be provided in a foster home. It is important that staff who supervise these children have the appropriate knowledge and experience to make decisions regarding their care. The appropriate number of trained staff on duty is needed to give the children adequate time and attention to meet their needs. Staff also need the time to plan a structured program of care for the residents and to document planning and decision-making for each resident.

In the past, approximately 60 to 70 requests per year were received to operate a children's residential facility. Facilities were operated by organizations connected to groups with child welfare experience.

Facilities were most often operated as nonprofits. Today the Office of Interdepartmental Regulation receives an average of 35 inquiries each month to operate a children's residential facility. Inquirers are private individuals who may not have had any children's residential experience. Many want to open for profit facilities.

The Joint Legislative Audit and Review Commission's (JLARC) December 2006 report "Evaluation of Children's Residential Services Delivered through the Comprehensive Services Act," recommends that collecting licensure fees be considered. The report recommends that these fees be used to provide training. The report states that training of facility staff is not adequately addressed in the current standards. In order to ensure that residents receive the care and education they need, staff must have the training and experience, as well as the time, to make quality decisions about the residents they are serving. The proposed changes to the regulation concerning licensure fees, additional required training and additional qualifications for administrative staff address issues discussed in the JLARC report.

An emergency regulation was required by Chapters 168 and 781 of the 2006 Acts of Assembly. This proposed regulation is necessary to replace the emergency regulation as required by the *Code of Virginia*.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Substantive changes include allowing the types of licenses issued to facilities regulated by DOE, DMHMRSAS, and DSS to be changed when compliance is an issue; adding the option of summary suspension of the license was added, to be consistent with the *Code of Virginia*; strengthening the qualifications of the staff who make administrative and supervision decisions at the facility and adding requirements ensuring that a qualified staff person is available to make decisions. All training requirements are moved to one section for clarity and additional training is required as suggested by the December 2006 JLARC report. Requirements are added that ensure that educational services are provided to the child in a timely manner. Record keeping requirements are clarified and written to comply with federal guidelines. Requirements for medical treatment and medication are improved according to guidance received from medical professionals. Staff supervision ratios are changed to better meet current practice and child advocacy guidelines. Emphasis has been redirected from behavior management to behavior support and helping residents to manage their own behavior. Recreation guidelines are written to ensure better planning and supervision during overnight trips or activities. Emergency procedures requirements are strengthened to ensure better preparation for an emergency in today's environment. Special requirements are added for specialized independent living programs, mother/baby programs, and for camping programs and programs that take residents on adventure activities. Requirements have also been added for every facility to name a community liaison person, to train staff and have policies and procedures regarding positive community relations.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.
If there are no disadvantages to the public or the Commonwealth, please indicate.

Primary advantages to the public:

- Better ensures that children placed in residential facilities receive the care and education that they need by requiring an adequate number of qualified staff;
- Families and parents that place their children in residential care are offered reassurance that their child is safe and that his needs are being met;
- Better ensures that tax payer funds are used to pay for adequate services for children; and
- Neighbors of facilities will see that there are requirements in place to protect their interests

Primary Disadvantages to the public:

- Although many providers are already meeting the proposed standards, operators of facilities that currently are not meeting the revised standards may incur additional expenses.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	"Annual" means within 12 months of the previous event or occurrence.	10 - Definitions "Annual" means within ~~12~~ 13 months of the previous event or occurrence.	*Allows the provider greater flexibility.
10	"Application" means a document completed by the facility to furnish the regulatory authority details about the facility's operations and includes certifications that the facility understands and intends to comply with regulatory requirements. An application includes inspection reports necessary to verify compliance with applicable requirements of other state agencies. An application is complete when all required information is provided and the application is signed and dated by the individual legally responsible for operation of the facility.	Deleted the definition.	The definition was unnecessary as all the information was provided in § 30.

10	"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substance (e.g. hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity which when applied to an individual are noxious or painful to the individual, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the individual .	The word individual was changed to resident. "Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substance (e.g. hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity which when applied to an individual are noxious or painful to the ~~individual~~ resident, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the ~~individual~~ resident.	The word resident is used consistently throughout the standards.
10	"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.	The words “public welfare or” were deleted. "Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of ~~public welfare or~~ social services authorized to place children in foster homes or adoptive homes.	The term “board of public welfare” is no longer used.
10	"Child with special needs" means a child in need of particular services because the child has mental retardation, a developmental disability, mental illness, emotional disturbance, a substance abuse problem, is in need of special educational services, or requires security services.	The definition was deleted.	The term is not used within the regulations.
10	"Child with a visual impairment" means one whose vision, after best correction, limits the child’s ability to profit from a normal or unmodified educational or daily living setting.	Definition deleted.	The term is not used.
10	"Children’s residential facility " or “facility” means	Added “and the Individual and Family Development Disabilities	Corrected the title of the DMHMRSAS standards.

	a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and which is required to be licensed or certified by the Code of Virginia except: 1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds; and 2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services 12 VAC 35-105-10 et seq.	Support Waiver" "Children's residential facility " or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and which is required to be licensed or certified by the Code of Virginia except: 1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds; and 2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services and the Individual and Family Developmental Disabilities Support Waiver, 12 VAC 35-105-10 et seq.	
10	"Confined in post-dispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in §16.1-284.1.B in the Code of Virginia.	Changed "in the Code of Virginia" to "of the Code of Virginia." "Confined in post-dispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in §16.1-284.1.B ~~in~~ to the Code of Virginia.	Preferred English usage.
10	"Corrective action plan" means violations documented by the regulatory authority and the facility's corrective action to the documented violations.	"Corrective action plan" means violations documented by the regulatory authority and the facility's submitted pledged corrective action to the documented violations ~~within a specified time frame.~~ cited by the regulatory authority.	Clarification.
10	"Health record" means the file maintained by a provider which houses personal health information.	"Health record" means the file maintained by a provider which ~~houses~~ contains personal health information.	Preferred language.
10	"Human research" means	"Human research" means any	To be consistent with the

	any systematic investigation utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.	systematic investigation ~~utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.~~ including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR46.101(b).	"Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services."
10	"Independent living program" means a competency-based program that is specifically approved to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.	Added "by the regulatory authority" to indicate who will approve the program. "Independent living program" means a competency-based program that is specifically approved <u>by the regulatory authority</u> to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.	Clarification.
10	"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies and time frames for reaching the goals and the individ-uals responsible for carrying out a plan.	Changed "a" plan to "the" plan. "Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies and time frames for reaching the goals and the individ-uals responsible for carrying out ~~a~~ <u>the</u> plan.	Clarification.
10	"Medication error" means that an error has been made in administering a medication to a resident when any of the following occur-including the following: (i) the wrong	"Medication error" means ~~that~~ an error ~~has been~~ made in administering a medication to a resident ~~when any of the following occur~~ including the following: (i) the wrong medication is given to a resident; (ii) the wrong resident is	Clarification.

	medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.	given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.	
10	"Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided evidence that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separa-tion, or custody, which provides to the contrary.	Changed the word "evidence" to "documentation." "Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided ~~evidence~~ documentation that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, which provides to the contrary.	Preferred language.
10	"Personal health information" means the information that encompasses the universe of oral, written or otherwise recorded information that is created or received by an entity and relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.	Deleted the word "and" after entity. "Personal health information" means the information that encompasses the universe of oral, written or otherwise recorded information that is created or received by an entity ~~and~~ relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.	Correction.
10	"Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when the administered medication is not a standard treatment for the	"Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when the individual's behavior places him or others at imminent risk and ~~when~~ the administered medication is not a standard treatment for the	Clarification/consistency with the "Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse

	individual's medical or psychiatric condition when that individual's behavior places him or others at imminent risk.	individual's medical or psychiatric condition ~~when that individual's behavior places him or others at imminent risk~~.	Services."
10	"Provider or Licensee" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.	"Provider or Licensee or Sponsor" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the ~~standards~~ regulatory and statutory requirements relating to the facility.	Added "sponsor" to clarify what a sponsor is. Changed "standards" to "regulatory" as this is preferred language.
10	"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a children's residential facility.	"Regulatory authority or agency" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a children's residential facility.	Added "agency" as this term is also used in the standards.
10	"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the legal guardians temporary relief from responsibility for their direct care.	"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.	Added "parents" as the child may be living with their parents at the time they are placed in respite care.
10	"Right" is something to which one has a legal or contractual claim.	Deleted this definition.	Not necessary.
10	"Rules of conduct" means a listing of rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.	Added "of a facility's." "Rules of conduct" means a listing of a facility's rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.	Clarification.
10	"Secure custody facility" means a detention home or a juvenile correctional	"Secure custody facility" means a detention home or a juvenile correctional center with physical	Clarification.

	center.	barriers that regulate movement.	
10	"Shall" means an obligation to act is imposed. "Shall not" means an obligation not to act is imposed.	Deleted these definitions.	Unnecessary.
10	"Standard" means a statement which describes in measurable terms a required minimum performance level.	"Standard" means a statement which describes in measurable terms a required minimum performance level. The term standard and the term regulation may be used interchangeably.	Clarification.
10	NA	"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.	Added this definition as the term is used in the standards.
10	"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship; and (ii) resident care will not be adversely affected.	"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship; and (ii) resident care will not be adversely affected. ~~The denial of a request for a variance is appealable when it leads to the denial or revocation of a license or certificate.~~	Deleted last sentence as it was unnecessary. *Code of Virginia* determines what can be appealed.
10	NA	"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.	Added the definition as the term is used in the standards.
10	"Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experi-ence curriculum for residents nine years of age and older who cannot presently function in home,	Changed the "and" to "or." "Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school,	Correction.

	school, and community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.	~~and~~ or community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.	
30	A. Initial applications 1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources, or, a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a description of the program; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; copy of floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the	30 - Applications Changed "must" and "will" to "shall." A. Initial applications 1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources, or, a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a description of the program; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; copy of floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and if required by the regulatory authority, references for three officers of the board, if applicable. This information ~~must~~ shall be submitted to and approved by the lead regulatory agency in order for the application to be considered complete. 2. All initial applications which are	Correct regulatory language.

	applicant; and if required by the regulatory authority, references for three officers of the board if applicable. This information must be submitted to and approved by the lead regulatory agency in order for the application to be considered complete. 2. All initial applications which are not complete within 12 months will be closed. 3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year. 4. Currently licensed providers must demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.	not complete within 12 months ~~will~~ shall be closed. 3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year. 4. Currently licensed providers ~~must~~ shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.	
40	The regulatory authority or regulatory authorities will arrange and conduct an on-site inspection of the facility; a thorough review of the services; and investigate the character, reputation, status, and responsibility of the applicant.	40 – The Investigation The regulatory authority or regulatory authorities shall arrange and conduct an on-site inspection of the facility and a thorough review of the services, and an ~~investigate~~ investigation of the character, reputation, status, and responsibility of the applicant.	Wording was improved.
50	A. Representatives of the departments shall make announced and unannounced reviews during the effective dates of the license/certificate. The purpose of these reviews is to monitor	50 – Review of Facilities Changed “departments” to “regulatory authorities.” A. Representatives of the ~~departments~~ regulatory authorities shall make announced and unannounced reviews during the effective dates of the license/-	New term used in the standards.

	compliance with applicable standards.	certificate. The purpose of these reviews is to monitor compliance with applicable standards.	
60	A. Information concerning the application for initial licensure of children's residential facilities shall be posted to the Interdepartmental Regulation web site, by locality.	60 – Posting of Information Changed "posted to", to "posted on." A. Information concerning the application for initial licensure of children's residential facilities shall be posted ~~to~~ on the Interdepartmental Regulation web site, by locality.	Correction
70	A. The facility shall demonstrate full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant provides reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances which pose an immediate and direct danger to residents. C. The facility shall comply with the terms of its license or certificate. H. Each facility shall self-report within 72 hours, to the lead regulatory agency, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents. K. The provider shall comply with its own policies and procedures.	70 – General Requirements A. The ~~facility~~ provider shall demonstrate ~~full~~ substantial compliance with ~~sufficient applicable~~ these standards to ~~clearly~~ demonstrate that its program and physical plant provides reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances which pose an immediate and direct danger to residents. C. The ~~facility~~ provider shall comply with the terms of its license or certificate. H. Each ~~facility~~ provider shall self-report within ~~72 hours~~ 10 days, to the lead regulatory agency, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents. K. The provider shall comply with ~~their~~ its own policies and procedures.	Substantial compliance wording was clarified. Used the term "provider" for consistency. *10 days was determined to be a more realistic timeframe for reporting lawsuits. Changed "their" to "its" as this is correct English usage.
80	A. If there is noncompliance with any of these standards during an	80 – Written Corrective Action Plans A. Facilities regulated by the Department of Juvenile Justice shall comply with the Board of Juvenile	*Clarified procedures for DJJ facilities by adding a new subsection A.

	initial or ongoing review or investigation, the regulatory authority shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan. B. The provider shall submit to the regulatory authority and implement a written corrective action plan for each standard found to be in noncompliance as identified on the licensing report-for which the provider is found to be in noncompliance. C. The plan of corrective action shall include a: 1. Description of each corrective action to be taken and person responsible for implementation; 2. Date of completion for each action; and 3. Signature of the person responsible for oversight of the implementation of the pledged corrective action. D. The provider shall submit the corrective action plan to the regulatory authority within 15 business days of the issuance of the licensing report. Extensions may be granted by the regulatory authority when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action shall be required if the regulatory authority determines that the violations are related to the health, safety or welfare of residents. E. A corrective action plan shall be approved by the regulatory authority. The	Justice's certification regulations governing corrective action plans. ~~A~~B. If there is noncompliance with ~~any of these~~ applicable standards during an initial or ongoing review or investigation, the regulatory authority shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan. ~~B~~C. The provider shall submit to the regulatory authority and implement a written corrective action plan for each standard ~~found to be in noncompliance as identified on the licensing report~~ for which the provider is found to be in noncompliance. ~~C~~D. The ~~plan of~~ corrective action plan shall include a: 1. Description of each corrective action to be taken and the person responsible for implementation; 2. Date of completion for each action; and 3. Signature of the person responsible for oversight of the implementation of the pledged corrective action. D. The provider shall submit the corrective action plan to the regulatory authority within 15 business days of the issuance of the licensing report. Extensions may be granted by the regulatory authority when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action shall be required if the regulatory authority determines that the violations ~~are related~~ pose a threat to the health, safety or welfare of residents. E. A corrective action plan shall be approved by the regulatory authority. The provider ~~has~~ shall have an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.	Improved wording and made it consistent with regulatory language.

	provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.		
90	B. Facilities Regulated by DOE, DMHMRSAS, or DSS. 1. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements, but has not demonstrated compliance with all the Interdepartmental Standards. A conditional license shall not exceed six months unless allowed by the Code of Virginia. 2. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with the Interdepartmental Standards, or other applicable regulations; has violations of licensing standards that pose a threat to the health or safety of residents being served; has multiple violations of licensing standards; or has failed to comply with a previous corrective action plan and has one or more systemic deficiencies. a. A provisional license may be issued at any time. b. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia. 3. An annual license or certificate: a. Shall be issued when the provider applies for renewal while holding a conditional or provisional	90 – Licenses/Certificates B. Facilities Regulated by DOE, DMHMRSAS, or DSS. 1. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements, but has not demonstrated compliance with all of the Interdepartmental Standards. A conditional license shall not exceed six months unless allowed by the Code of Virginia. 2. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with the Interdepartmental Standards, or other applicable regulations; has violations of licensing standards that pose a threat to the health or safety of residents being served; ~~has multiple violations of licensing standards;~~ or ~~has failed to comply with a previous corrective action plan and~~ has ~~one~~ two or more systemic deficiencies. a. A provisional license may be issued at any time. b. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia. 3. An annual license or certificate: a. Shall be issued when the provider applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of the Interdepartmental Standards and other regulations and statutes. b. May be issued at any time, if the provider has received one systemic deficiency. c. May be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for	*Vague and unnecessary language was eliminated in the provisional license section. The number of systemic deficiencies was changed back to two which is the current requirement. Changes were also made to improve the wording of the standard.

	license or certificate and substantially meets or exceeds the requirements of the Interdepartmental Standards and other regulations and statutes. b. May be issued at any time, if the provider has received one systemic deficiency. c. May be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined. 4. A triennial license or certificate shall be issued when the provider: a. Applies for renewal while holding an annual or triennial license or certificate and b. Substantially meets or exceeds the requirements of the Interdepartmental Standards and other applicable regulations and statutes. C. The term of a facility's license or certificate may be modified at any time during the licensure or certification period based on a change in the facility's compliance with this regulation.	all annual licenses and renewals combined. 4. A triennial license or certificate shall be issued when the provider: a. Applies for renewal while holding an annual or triennial license or certificate and b. Substantially meets or exceeds the requirements of the Interdepartmental Standards and other applicable regulations and statutes. C. The term of a facility's license or certificate may be modified at any time during the licensure or certification period based on a change in the facility's compliance with ~~this regulation~~ these standards and other applicable statutes and regulations.	
100	A. There shall be a $500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn, all subsequent initial applications will require another $500 fee. B. There shall be a $100 nonrefundable renewal application fee. C. No renewal fee will be charged to providers directly following the	100 – Application Fees A. There shall be a $500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn, all subsequent initial applications ~~will~~ shall require another $500 fee. B. There shall be a $100 nonrefundable renewal application fee. C. ~~No~~ A renewal fee ~~will~~ shall not be charged to providers directly following the issuance of a conditional license. D. ~~This~~ The application fee ~~does~~	Changes were made to improve wording and to use consistent regulatory language.

	issuance of a conditional license. D. This application fee does not apply to state or locally owned, operated, or contracted facilities. E. Such fees are to be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.	shall not apply to state or locally owned, operated, or contracted facilities. E. ~~Such~~ Application fees ~~are to~~ shall be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.	
110	C. A change shall not be implemented prior to approval by the regulatory authority. A determination will be made as to whether changes will be approved and the license or certificate modified accordingly or whether an application for a new license or certificate must be filed. The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required.	110 - Modification C. A change shall not be implemented prior to approval by the regulatory authority. ~~A determination will be made as to whether changes will be approved and the license or certificate modified accordingly or whether an application for a new license or certificate must be filed.~~ The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required.	The second sentence was deleted as it was unnecessary.
120	B. If denial of a license or certificate is recommended, the facility will be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.	120 - Denial B. If denial of a license or certificate is recommended, the facility ~~will~~ shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.	"Will" was replaced with "shall" to use consistent regulatory language.
130	A. The license or certificate may be revoked when the provider: 1. Violates any provision of applicable laws or applicable regulations made pursuant to such laws;	130 - Revocation A. ~~The~~ A license or certificate may be revoked when the provider: 1. Violates any provision of applicable laws or ~~applicable~~ regulations ~~made pursuant to such laws~~;	Unnecessary language was deleted.
150	A. Any request for a	150 - Variances A. Any request for a variance shall	*The second requirement

	variance shall be submitted in writing to the regulatory authority and should include a: 1. Justification why enforcement of the standard would create an undue hardship; and 2. Justification why resident care would not be adversely affected if the variance was granted. B. A variance shall not be effected prior to approval of the regulatory authority.	be submitted in writing to the regulatory authority and ~~should~~ shall include a: 1. Justification why enforcement of the standard would create an undue hardship; ~~and~~ 2. How the facility can comply with the intent of the standard; and ~~2~~3. Justification why resident care would not be adversely affected if the variance was granted. B. A variance shall not be ~~effected~~ implemented prior to approval of the regulatory authority.	was added at the request of a public commenter. Other changes were made to improve wording.
160	The departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Service; and Social Services are responsible for complete and prompt investigation of all complaints and allegations at the facilities where they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law enforcement authority.	160 – Investigation of Complaints and Allegations The ~~departments~~ Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse ~~Service~~ Services; and Social Services are responsible for complete and prompt investigation of all complaints and allegations ~~at the facilities where~~ made against providers for which they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law enforcement authority.	Changes were made to improve wording.
180	B. The provider shall develop and implement a written decision making plan which shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan must be approved by the regulatory agency and include an organizational chart.	180 – Responsibilities of the Provider B. The provider shall develop and implement a written decision making plan which shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan ~~must~~ shall ~~be approved by the regulatory agency and~~ include an organizational chart.	*The requirement to have the regulatory agency approve the decision making plan was deleted as it was determined the approval was unnecessary.
200		200 - Insurance	

	A. The facility shall maintain liability insurance covering the premises and the facility's operations. B. The facility shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff. C. The members of the governing body and staff who have been authorized to handle the facility's or resident's funds shall be bonded or otherwise indemnified against employee dishonesty.	A. The ~~facility~~ provider shall maintain liability insurance covering the premises and the facility's operations. B. The ~~facility~~ provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff. C. The members of the governing body and staff who have been authorized to handle the facility's or ~~resident's~~ residents' funds shall be bonded or otherwise indemnified against employee dishonesty.	Changes were made to improve wording and to use consistent language.
210	The facility shall not use residents in its fund-raising activities without written permission of the legal guardian and the permission of residents 14 years or older.	210 – Fund-Raising The ~~facility~~ provider shall not use residents in its fund-raising activities without written permission of the legal guardian and the permission of residents 14 years or older.	Wording was changed to be consistent.
220	The facility shall develop and implement a written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and on facility related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility sponsored activities unless the weapons are:	220 - Weapons The ~~facility~~ provider shall develop and implement ~~a~~ written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and ~~on~~ during facility related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility sponsored activities unless the weapons are:	Wording was improved.
230	B. The governing body or its official representative shall notify the regulatory authorities within five working days of any change in administrative structure or newly hired	230 – Relationship to Regulatory Authority B. The governing body or its official representative shall notify the regulatory authorities within five working days of any change in administrative structure or newly hired chief administrative officer or program director.	*"Program director" was added as this is a key position in a children's residential facility.

	chief administrative officer.		
240	Facilities which are approved to serve persons over the age of 17 years shall comply with these interdepartmental standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing, programs, services, and supervision for such persons are provided separately from those for the residents.	240 – Facilities Serving Persons Over 17 Years Facilities which are approved to serve persons over the age of 17 years shall comply with these interdepartmental standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing, programs, services, and supervision for such persons are provided separately from those for the other residents.	"Other" was inserted for clarity.
250	B. Tuberculosis Evaluation. 1. At the time of hire, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days. E. The facility shall report any active case of tuberculosis developed by a staff member or resident to the local health department.	250 – Health Information B. Tuberculosis Evaluation. 1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days. E. The ~~facility~~ provider shall report any active case of tuberculosis developed by a staff member or a resident to the local health department.	*"Or residency at the facility" was added so individuals other than staff or residents who live in the facility would also be required to have a TB evaluation. "Facility" was changed to "provider" for consistency. *The resident was added in subsection E as any case of TB must be reported.
270	A. Standards establishing minimum position qualifications shall be applicable to all facilities. In lieu of the minimum position qualifications contained in this chapter, facilities subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the	270 - Qualifications A. Standards establishing minimum position qualifications shall be applicable to all ~~facilities~~ providers. In lieu of the minimum position qualifications contained in this chapter, ~~facilities~~ providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local government personnel office may develop written minimum entry level	Facility was changed to provider for consistency. *"After the effective date of these standards" was added to ensure that all current staff would be grandfathered

	rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority. B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards shall:	qualifications in accord with the rules and regulations of the supervising personnel authority. B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards <u>after the effective date of these standards</u> shall:	
300	Content of personnel records of volunteers, and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations. B. The records of each employee shall include: 6. Date of employment ; 9. Documentation of all training required by this regulation and any other training received by individual staff; and	300 – Personnel Records Content of personnel records of volunteers, <u>students/interns</u> and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations. B. The records of each employee shall include: 6. Date of employment <u>for each position held</u> and separation; 9. Documentation of all training required by ~~this regulation~~ <u>these standards</u> and any other training received by individual staff; and	*"Student/interns" was added to be consistent with other standards. *"For each position held" was added in element 6 to more easily determine when an individual begins each job that may have different requirements. "This regulation" was changed to "these standards" in element 9 for consistency.
310	A. Required initial training: 2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall ~~implement~~ conduct emergency preparedness and response training which shall include: 3. Within 14 days following their begin date, new	310 – Staff Development A. Required initial training: 2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall ~~implement~~ <u>conduct</u> emergency preparedness and response training which shall include: 3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same	"Conduct" replaced "implemented" as this is preferred wording. "Sponsor" was changed to "provider" to be consistent. *"Or as required by other state or federal regulations" was added as these regulations may require that this training

	employees, employees transferring from other facilities operated by the same sponsor, relief staff, volunteers and students/interns shall be given orientation and training regarding: 6. Within 30 days following their begin date all staff shall be trained on the facility's policies and procedures regarding universal precautions. 7. Within 30 days following their begin date, all staff shall be trained on good neighbor policies and community relations. D. Each full time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties. E. ~~Facilities~~ Providers shall develop and implement written policies and procedures to ensure that part time staff receive training applicable to their positions. F. Training provided ~~will~~ shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.	~~sponsor~~ provider, relief staff, volunteers and students/interns shall be given orientation and training regarding: 6. Within 30 days following their begin date or as required by other state or federal regulations, all staff shall be trained on the facility's policies and procedures regarding ~~universal~~ standard precautions. 7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities and good neighbor policies and community relations. ~~D~~C. Each full time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties. ~~E~~D. ~~Facilities~~ Providers shall develop and implement written policies and procedures to ensure that part time staff receive training applicable to their positions. ~~F~~E. Training provided ~~will~~ shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.	be provided sooner. "Universal" was changed to "standard" as this is the more current term. *"Training in appropriate siting of children's residential facilities" was added as this requirement is in the *Code of Virginia*. A lettering error was corrected. Wording was changed for consistency.
330	A. Each applicant shall show evidence that they have been trained on appropriate siting of children's residential facilities. B. The applicant shall be interviewed in person by the regulatory authority to determine the qualifications	330 – The Applicant A. Each applicant shall ~~show evidence~~ provide documentation that they have been trained on appropriate siting of children's residential facilities and good neighbor policies and community relations. B. The applicant shall be interviewed in person by the regulatory authority to determine	Wording was changed for consistency. *"And good neighborhood policies and community relations" was added as this training is required for the applicant by the *Code of Virginia.*

	of the owner or operator as set out in this regulation. C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in this regulation, to perform the duties of the chief administrative officer.	the qualifications of the owner or operator as set out in ~~this regulation~~ these standards. C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in ~~this regulation~~ these standards, to perform the duties of the chief administrative officer.	
340	A. The chief administrative officer shall have the following responsibilities: 1. Responsibility for compliance with the Standards for Interdepartmental Regulation of Children's Residential Facilities and other applicable standards; 2. Responsibility for all personnel; 3. Overseeing facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and 4. Responsibility for the facility's financial integrity. B. A chief administrative officer appointed after the effective date of these standards shall have at least: 1. A master's degree in social work, psychology, counseling, or nursing and two years of full time paid work experience in a children's residential facility and one year full time experience in an administrative or supervisory capacity; or 2. A baccalaureate degree in social work, psychology, counseling, or nursing and three years full time paid work experience with children, at least two of	340 – Chief Administrative Officer A. The chief administrative officer shall have the following responsibilities: 1. Responsibility for compliance with the Standards for Interdepartmental Regulation of Children's Residential Facilities and other applicable standards and statutes; 2. Responsibility for overseeing all personnel; 3. Overseeing facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and 4. Responsibility for the facility's financial integrity. B. A chief administrative officer appointed after the effective date of these standards shall have at least: 1. A master's degree in social work, psychology, counseling, ~~or~~ nursing or administration and ~~two years of full time paid work experience in a children's residential facility and one year full time experience in an administrative or supervisory capacity~~ a combination of two years professional experience working with children and in administration and supervision ; or 2. A baccalaureate degree in social work, psychology, counseling, ~~or~~ nursing or administration and three years of combined ~~full time paid work~~ professional experience with children, ~~at least two of which were in a children's residential facility~~ and	*"And statutes" was added in 340.A.1 as this is also a duty of the CAO. *Qualification requirements were revised to offer the provider greater flexibility in hiring a qualified CAO.

	which were in a children's residential facility and one year of administrative or supervisory experience; or 3. A master's in education and two years of full time paid work experience in a children's residential facility and one year full time experience in an administrative or supervisory capacity or baccalaureate degree in education and three years full time paid work experience with children, at least two of which were in a children's residential facility and one year of administrative or supervisory experience may be accepted for a chief administrative officer of a program whose lead regulatory agency is the Department of Education; or 4. A baccalaureate degree and seven years of full time paid work experience with children at least four of which shall be in a children's residential facility and two years of administrative or supervisory experience.	~~one year of~~ administrative ~~or~~ and supervisory experience; or ~~4~~3. A baccalaureate degree and a combination of ~~seven~~ four years ~~of full time paid work~~ professional experience ~~with children at least four of which shall be~~ in a children's residential facility and ~~two years of administrative or supervisory experience~~ administration and supervision. ~~3~~4. For a program whose lead regulatory agency is the Department of Education, ~~A~~ a master's degree in education and a combination of two years of ~~full time paid work~~ professional experience ~~in a children's residential facility~~ working with children and ~~one year full time experience~~ in ~~an administrative or supervisory capacity~~ administration and supervision or a baccalaureate degree in education and a combination of three years ~~full time paid work~~ professional experience with children, ~~at least two of which were in a children's residential facility and one year of administrative or supervisory experience~~ and in administration and supervision may be accepted ~~for a chief administrative officer of a program whose lead regulatory agency is the Department of Education~~;	
350	D. A person appointed after the effective date of these standards to direct programs shall have at least: 1. A master's degree in social work, psychology, counseling, or nursing and two years of full time paid work experience with children, one of which needs to be in a children's residential facility and one year of administrative or supervisory experience; 2. A baccalaureate degree in social work, psychology,	350 – Program Director D. A person appointed after the effective date of these standards to direct programs shall have at least: 1. A master's degree in social work, psychology, counseling, or nursing and a combination of two years ~~of full time paid work~~ professional experience with children, ~~one of which needs to be~~ in a children's residential facility and ~~one year of~~ in ~~administrative or supervisory experience~~ administration or supervision; 2. A baccalaureate degree in social work, psychology, counseling or nursing and a combination of three years ~~full time paid~~ professional	*Qualification requirements were revised to offer the provider greater flexibility in hiring a qualified Program Director.

	counseling or nursing and three years full time paid experience working with children, one of which must be in a children's residential facility and one year of administrative or supervisory experience; 3. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism; 4. A baccalaureate degree and five years of full time paid experience working with children at least three of which must be in a children's residential facility and one year of full time supervisory or administrative experience; or 5. A master's degree in education and two years of full time paid work experience with children, one of which needs to be in a children's residential facility and one year of administrative or supervisory experience or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and three years full time paid experience working with children, one of which must be in a children's residential facility and one year of administrative or supervisory experience may be accepted for a program director of a program whose lead regulatory agency is the Department of Education.	experience ~~working~~ with children, ~~one of which must be~~ in a children's residential facility and ~~one year of administrative or supervisory experience~~ in administration or supervision; ~~4~~3. A baccalaureate degree and a combination of ~~five~~ four years of ~~full time paid~~ professional experience working with children, ~~at least three of which must be~~ in a children's residential facility and ~~one year of full time supervisory or administrative experience~~ in administration or supervision; or ~~3~~4. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism; 5. For a program whose lead regulatory agency is the Department of Education, ~~A~~ a master's degree in education and a combination of two years of ~~full time paid work~~ professional experience with children, ~~one of which needs to be~~ in a children's residential facility and ~~one year of administrative or supervisory experience~~ in administration or supervision or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and a combination of three years ~~full time paid~~ professional experience working with children, ~~one of which must be~~ in a children's residential facility and ~~one year of administrative or supervisory experience~~ in administration or supervision ~~may be accepted for a program director of a program whose lead regulatory agency is the Department of Education~~.	
360	3. A baccalaureate degree and three years of full time	360 – Case Manager 3. A baccalaureate degree and three years of ~~full time paid~~	*The requirement to have experience working in a

	paid experience working with children at least one of which shall be in a children's residential facility.	professional experience working with children ~~at least one of which shall be in a children's residential facility~~.	children's residential facility was deleted as other administrative staff have this requirement. It is not necessary to require this experience for the case manager.
370	B. Child care supervisors shall have: 1. A baccalaureate degree in social work or psychology and two years of full time paid experience working with children one year of which must have been in a residential facility for children; 2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years full time paid experience working with children with at least two years in a residential facility for children; or 3. A combination of education and experience working with children as approved by the lead regulatory authority.	370 – Child Care Supervisor B. Child care supervisors shall have: 1. A baccalaureate degree in social work or psychology and two years of ~~full time paid~~ professional experience working with children one year of which must have been in a residential facility for children; 2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years ~~full time paid~~ professional experience working with children with at least two years in a residential facility for children; or 3. A combination of education and experience working with children as approved by the lead regulatory authority.	Wording was changed to be consistent with other qualification standards and to provide greater flexibility in hiring child care supervisors.
380	C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the child care supervisor, chief administrative officer, program director, or case manager.	380 – Child Care Staff C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, ~~or~~ case manager, child care supervisor or a child care worker with one or more years professional experience working with children. This section does not apply to the juvenile correctional facilities where staff are trained in a comprehensive basic skills curriculum before beginning their child care duties.	*A change was made to allow providers to have greater flexibility in hiring child care staff.
400		400 – Volunteers and Students/Interns	

	B. The facility shall not be dependent upon use of volunteers or students/interns to provide basic services.	B. The facility shall not be dependent upon ~~use of~~ volunteers or students/interns to provide basic services.	Unnecessary wording was deleted.
460	C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981, and have made no structural changes or constructed any buildings. D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after the effective date of these standards must comply with the one to four ratio.	460 – Toilet Facilities C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981~~, and have made no structural changes or constructed any buildings~~. D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after the effective date of these standards ~~must~~ shall comply with the one to four ratio.	Unnecessary wording was deleted. "Must" was changed to "shall" to use consistent regulatory language.
470	2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.	470 – Personal Necessities 2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be ~~available~~ used to dispose of diapers. If both cloth and disposable diapers are used there shall be a diaper pail for each.	Wording was clarified.
480	B. No more than four children ~~may~~ shall share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers. K. The sleeping areas' environment shall be conducive to sleep and rest.	480 – Sleeping Areas B. No more than four children ~~may~~ shall share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers. K. The ~~sleeping areas'~~ environment of ~~the~~ sleeping areas shall be conducive to sleep and rest.	"May" was changed to "shall" for consistency. Wording was improved in K.

500	E. Video and audio monitoring shall be permitted only in common hallways and common areas. All such monitoring shall have the approval of the regulatory authority and if licensed by DMHMRSAS the approval of the Office of Human Rights. DJJ certified facilities shall obtain the approval of the regulatory authority before any video or audio monitoring is permitted. Video and audio monitoring is prohibited in bathrooms, dressing areas, and bedrooms.	500 – Residents' Privacy E. Video and audio monitoring shall be permitted only ~~in common hallways and common areas. All such monitoring shall have the approval of the regulatory authority and if licensed by DMHMRSAS the approval of the Office of Human Rights. DJJ certified facilities shall obtain the approval of the regulatory authority before any video or audio monitoring is permitted. Video and audio monitoring is prohibited in bathrooms, dressing areas, and bedrooms~~ with the approval of the lead regulatory agency and for facilities licensed by DMHMRSAS, the approval of the Office of Human Rights.	*As situations where video and audio monitoring are permitted vary, the standard was changed to allow each regulatory agency to make the decision to permit monitoring.
510	C. Facilities licensed or certified to care for 13 or more residents shall have recreation space distinct from the living room.	510 – Living Room and Indoor Recreation Space C. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit.	Wording was added for clarification.
640	A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident should be maintained as part of the case record. A separate health record may be kept on each resident.	640 – Maintenance of Residents' Records A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident ~~should~~ shall be maintained as part of the case record. A separate health record may be kept on each resident.	"Should" was changed to "shall" to have consistent regulatory language.
660	2. Document approval, as required by the regulatory authorities, for each research project using residents as subjects of human research.	660 – Participation of Residents in Human Research 2. Document approval, as required by the regulatory authorities, for each research project using residents as subjects of human research, unless such research is exempt from review.	Language was added at the advice of the Attorney General's office.
700	A. At the time of admission,	700 – Face Sheet A. At the time of admission, each	*Information on the

	each resident's record shall include a completed face sheet which contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, and emergency contacts.	resident's record shall include a completed face sheet which contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, ~~and~~ emergency contacts <u>and parents, if appropriate</u>.	resident's parents should be maintained depending on each resident's situation.
710	Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities, except when a juvenile is confined in post-dispositional detention.	710 – Initial Objectives and Strategies Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities~~, except when a juvenile is confined in post-dispositional detention~~.	*Secure detention is exempted from this requirement as DJJ standards cover the issue.
720	H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report: 1. The resident; 2. The resident's family and legal guardian, or legally authorized representative; 3. The placing agency; and 4. Facility staff.	720 – Service Plans/Quarterly Reports H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report: 1. The resident; 2. The resident's family, if appropriate, and legal guardian~~, or legally authorized representative~~; 3. The placing agency; and 4. Facility staff.	*The resident's family should be involved with planning for the child, if appropriate. Legally authorized representative was deleted as children do not have legally authorized representatives.
760	A. The program of the facility, except a secure	760 – Case Management Services A. The program of the facility, ~~except a secure detention facility in~~	This portion of the standard was rewritten for clarification.

	detention facility in which juveniles are not confined with a suspended commitment to the Department of Juvenile Justice, including shall be designed to provide case management services. Case managements services which address:	~~which juveniles are not confined with a suspended commitment to the Department of Juvenile Justice~~, ~~including~~ shall be designed to provide case management services. In secure detention this requirement applies only to residents confined in post-dispositional detention. Case managements services ~~which~~ shall address:	"Which" was changed to "shall" to use consistent regulatory language.
780	E. The identity of the individual making each entry in the daily activity log shall be recorded.	780 – Structured Program of Care E. The identity of the individual making each entry in the daily ~~activity~~ communication log shall be recorded.	The activity log was renamed the communication log.
800	B. At the time of placement, except for secure detention and emergency placements, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. Secure detention and emergency placements shall have completed the screening assessment on each resident within five days of placement.	800 – Medical Examination and Treatment B. ~~At the time of placement~~ Within seven days of placement, except for secure detention ~~and emergency placements~~, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. Secure detention ~~and emergency placements~~ shall have completed the screening assessment on each resident within five days of placement.	*The facility was given seven days to complete the screening assessment for tuberculosis as obtaining medical appointments for children is difficult.
810	F. A medication administration record shall be maintained of all medicines received by each resident and shall include: 1. Date the medication was prescribed; 2. Drug name; 3. Schedule for	810 - Medication F. A medication administration record shall be maintained of all medicines received by each resident and shall include: 1. Date the medication was prescribed; 2. Drug name; 3. Schedule for administration; 4. Strength;	*"Actual time administered" is not usually a component of a medication administration record. The requirement was deleted. *The requirement to notify the prescribing professional was deleted as prescribing

	administration; 4. Strength; 5. Route; 6. Actual time administered; 7. Identity of the individual who administered the medication; and 8. Dates the medication was discontinued or changed. H. Medication refusals shall be documented including action taken by staff. The prescribing professional shall be contacted unless the refusal is addressed in standing orders.	5. Route; ~~6. Actual time administered;~~ ~~7~~6. Identity of the individual who administered the medication; and ~~8~~7. Dates the medication was discontinued or changed. H. Medication refusals shall be documented including action taken by staff. ~~The prescribing professional shall be contacted unless the refusal is addressed in standing orders.~~	professionals are not easily available. Technical assistance will be provided with this standard to ensure the safety of the resident.
820	F. Providers shall assure that food is available to residents who wish to eat breakfast before the 15 hours have expired.	820 - Nutrition F. Providers shall assure that food is available to residents who ~~wish~~ need to eat breakfast before the 15 hours have expired.	"Wish" was changed to "need" for clarification.
830	A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency.	830 – Staff Supervision of Residents A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the lead regulatory agency for live-in staff.	Wording was added to clarify that live-in staff are allowed for certain facilities.
860	A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include: 1. Identification of positive and problem behaviors; 2. Identification of triggers for behaviors; 3. Identification of successful intervention strategies for problem	860 – Behavior Support A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include: 1. Identification of positive and problem behaviors; 2. Identification of triggers for behaviors; 3. Identification of successful intervention strategies for problem behavior; 4. Techniques for managing anger and anxiety; and	*DJJ requested the exception due to the variable and often short time frames children are placed in secure detention and the Reception and Diagnostic Center.

	behavior; 4. Techniques for managing anger and anxiety; and 5. Identification of interventions that may escalate inappropriate behaviors. B. Individualized behavior support plans shall be developed in consultation with the: 1. Resident; 2. Legal guardian; 3. Resident's parents, if applicable; 4. Program director; 5. Placing agency staff; and 6. Other applicable individuals. c. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.	5. Identification of interventions that may escalate inappropriate behaviors. B. Individualized behavior support plans shall be developed in consultation with the: 1. Resident; 2. Legal guardian; 3. Resident's parents, if applicable; 4. Program director; 5. Placing agency staff; and 6. Other applicable individuals. c. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan. <u>D. This section shall not apply to secure detention and the Reception and Diagnostic Center.</u>	
900	3. Legal guardians within 72 hours following the resident's admission, except that this requirement does not apply: a. To secure detention facilities except when a juvenile is confined in post-dispositional;	900 – Behavioral Interventions 3. Legal guardians within 72 hours following the resident's admission, except that this requirement does not apply: a. To secure detention facilities except when a juvenile is confined in post-dispositional <u>detention</u>;	Correction - The word "detention" was originally omitted.
920	A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment process shall be kept in the resident's record. B. The provider shall ensure that educational	920 - Education A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment ~~process~~ shall be kept in the resident's record. D. When a child with ~~disabilities~~ <u>a disability</u> has been placed in a residential facility ~~without the knowledge of school division~~	Wording was changed for clarification.

	guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program. C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations. D. When a child with disabilities has been placed in a residential facility without the knowledge of school division personnel in the resident's home locality, the facility shall contact the division superintendent in that locality in order to effect compliance with applicable state and federal requirements relative to the education of children with disabilities. Documentation regarding the contact with the resident's home school locality shall be kept in the resident's record.	~~personnel in the resident's home locality~~, the facility shall contact the division superintendent ~~in that~~ of the resident's home locality ~~in order to effect compliance comply with applicable state and federal requirements relative to the education of children with disabilities.~~ Documentation ~~regarding~~ of the contact with the resident's home school ~~locality~~ shall be kept in the resident's record.	
940	10. Documentation of any variations from trip plans and reason and reason for the variation.	940 - Recreation 10. Documentation of any variations from trip plans and reason ~~and reason~~ for the variation.	Correction – "and reason" was repeated.
950	A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community, except this section does not apply to secure custody facilities.	950 – Community Relationships A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community, except this ~~section~~ subsection does not apply to secure custody facilities.	"Section" was changed to "subsection".
1010	B. There shall be written safety rules which shall include taking head counts at each stop, which are appropriate to the	1010 – Vehicles and Power Equipment B. There shall be written safety rules for transportation of residents appropriate to the population served, which shall include taking head counts at each stop, ~~which are~~	Rearranged wording for clarification.

	population served, for transportation of children.	~~appropriate to the population served, for transportation of children~~.	
1020	When the provider has received legal custody of a child pursuant to the Code of Virginia, copies of any foster care plans submitted to the court shall be placed in the resident's record.	1020 – Reports to Court ~~When the provider has received legal custody of a child pursuant to the Code of Virginia, copies of any foster care plans submitted to the court shall be placed in the resident's record.~~	Deleted standard as it was unnecessary. Renumbered following standards.
1060	A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address: 1. Documentation of contact with the local emergency coordinator to determine local disaster risks and communitywide plans to address different disasters and emergency situations;	1050 – Emergency and Evacuation Procedures ~~1060~~ 1050.A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address: 1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks ~~and~~ (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;	*Added "what assistance the local emergency management office will provide" as some localities will not be able to provide special services for residential facilities.
	B. The provider shall develop emergency preparedness and response training for all employees, contractors, students, and volunteers which shall include responsibilities for:	B. The provider shall develop emergency preparedness and response training for all employees, contractors, ~~students~~ students/interns, and volunteers which shall include responsibilities for:	"Students" was replaced with "students/interns" for consistency.
	F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the parent or guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the	F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the ~~parent or~~ legal guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the lead regulatory authority as soon as possible, but no later than 72 hours after the incident occurs.	"Parent" was deleted as the legal guardian must be notified in the event of an emergency.

	lead regulatory authority as soon as possible, but no later than 72 hours after the incident occurs. L. A record shall be maintained for each evacuation drill and shall include the following: 1. Buildings in which the drill was conducted; 2. Date and time of drill; 3. Amount of time to evacuate the buildings; 4. Specific problems encountered; 5. Staff tasks completed including: a. Head count, and b. Practice in notifying emergency authorities; 6. A summary; and 7. The name of the staff members responsible for conducting and documenting the drill and preparing the record.	L. A record shall be maintained for each evacuation drill and shall include the following: 1. Buildings in which the drill was conducted; 2. Date and time of drill; 3. Amount of time to evacuate the buildings; 4. Specific problems encountered; 5. Staff tasks completed including: a. Head count, and b. Practice in notifying emergency authorities; and ~~6. A summary; and~~ ~~7~~6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.	The requirement for a summary was deleted as it was repetitive.
1070	C. The resident's individualized service plan shall include, in addition to the requirements found in §22 VAC 42-11-630, goals, objectives, and strategies addressing each of the following areas, as applicable: F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in § 22 VAC 42-11-820.A-C. D. Each independent living program shall develop and implement policies and procedures to train all	1060 – Independent Living Programs ~~1070~~ 1060.C. The resident's individualized service plan shall include, in addition to the requirements found in ~~§~~22 VAC 42-11-630, goals, objectives, and strategies addressing each of the following areas, as applicable: F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in ~~§~~ 22 VAC 42-11-820.A-C.	Standard signs were deleted as they are unnecessary. "Will" was changed to "shall" to use consistent regulatory language.

	direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation ~~will~~ shall be kept in the employee's staff record.		
1080	C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed for each child at the time of admission.	1070 – Mother/Baby Programs C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed by the legal guardian for each child at the time of admission.	"By the legal guardian" was added for clarification.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
1 provider	Suggests that these standards be shared with local DSS social workers.	Proposed standards have been shared and final standards will be shared. Requires no change to regulation.
1 provider group with 15 individuals/providers writing individually to support the provider group comments	Requests a process to appeal violations.	Requires no change to the regulations. *Code of Virginia* determines what is appealable. Citation of standards is not appealable. Each agency has a problem solving process to discuss issues that are not appealable.
1 provider group with 15 individuals/providers writing individually to support the provider group comments, 1 provider with 4 associated members of the public, 1	Questions the interdepartmental or "one size fits all"approach as DSS facilities serve children with fewer and less severe behavioral difficulties. Standards apply to all facilities serving all types of children. Standards include "mental health standards" not applicable to DSS facilities.	No change required. Comments address a licensing approach, not specific standards. Standards are written to protect all children in out-of-home care. Flexibility for different types of facilities is provided by requiring policies and procedures written specifically for the facility.

provider with 1 associated member of the public	Standards should provide flexibility.	
5 members of the public associated with 1 provider	Regulations usurp the responsibilities of non-profit boards.	The *Code of Virginia* requires that children's residential facilities be licensed.
1 provider	Has concerns about the interpretations that will be developed. Interpretations may change the provider's understanding of the standards.	No change required. Comment references unpromulgated material.
1 provider, 2 associated members of the public	Have concerns about the costs of new standards particularly standards regarding education requirements, training, and use of lifeguards.	Changes were made to educational requirements for staff to give providers more flexibility in hiring qualified staff. No change was made to training or lifeguard requirements. These new requirements were supported by the December 2006 JLARC report. Lifeguards are a basic safety issue. Cost was considered for all standards.
1 provider	Had concerns about the changes in background checks, especially concerning barrier crimes.	No change required. Background check requirements are found in the *Code of Virginia.*
Office of Attorney General (OAG)	Given the controversy surrounding parental relinquishment of custody in order to obtain funding for residential placements, it may be more sensitive on the part of regulatory agencies to recognize the standing of parents, when they have legal custody, as superior to that of other legal guardians by referencing parents throughout, rather than to alleviate that role.	"Parent" or "parent, if applicable" was added where appropriate throughout the regulations.
1 state agency	Supports the efforts to make regulatory language consistent across agencies.	No action necessary.
1 provider, 4 providers with 21 associated individuals	Recommended that substantial compliance be used when determining compliance with certain standards not associated with health and safety. Substantial compliance would allow regulators to serve in a teaching role and would allow for minor human errors. Providers are concerned about violations appearing on a licensing website.	No action necessary. Comments refer to a compliance procedure, not a particular standard.
OAG	Made several general suggestions to improve wording or grammar throughout the regulations.	Clarifications and corrections were made.
DJJ	10- Definitions Annual should be defined as an event or occurrence completed within the same calendar month	Annual was redefined as within 13 months of the previous event or occurrence to allow the provider flexibility.

	as the previous event or occurrence.	
OAG	The definition of human research should be consistent with the definition used by the Office of Human Rights.	The change was made.
2 providers, 16 individuals associated with 2 providers, 1 provider group	The denial of a variance should be appealable even if it does not result in the denial or revocation of a license.	The sentence regarding appeals was deleted from the definition as it was unnecessary and seemed to cause confusion. The *Code of Virginia* determines what issues are appealable.
5 providers	Requested a definition of post-dispositional detention.	No action needed. A definition was already provided under "confined in post-dispositional detention".
1 provider	Requested a definition of volunteer.	A definition of "volunteer" was added.
1 provider group	Requested that the definition of systemic deficiency be changed to require that a systemic deficiency only be given after the regulatory authority has given written notice to the facility and the defects continue to occur.	The definition of "systemic deficiency" was not changed. The regulations were changed to say that it would take two systemic deficiencies instead of one for a facility to receive a provisional license.
OAG	The term "standards" are used in the title of these regulations and in other licensing regulations of other state agencies. You and the other agencies may want to consider changing the term "standards" to "regulations." Standard usually implies something that one aspires to rather than a minimum requirement.	The term "standard" was not changed as this is the generally accepted term used by providers. A change was made to state that the term "standards" would be used interchangeably with the term "regulations".
OAG	Self-admission is defined as the admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission." What law is being referenced?	No change made. This information will be provided in technical assistance.
	20 – Interdepartmental Cooperation	
1 state agency	Requested that even though the concept was implicit that a requirement be added that DJJ, DOE, DMHMRSAS, and DSS actively assist one another. The sharing of expertise and	No requirement was added. The four departments assist each other as resources allow. The Interdepartmental procedures will be reviewed to ensure more consistency.

	experience can only enhance the quality of the services provided.	
1 provider and associated individuals 1 provider	30- Applications Support the concept of substantial compliance.	No action necessary.
2 providers and 9 associated individuals 1 state agency	50-Review of Facilities Want substantial compliance reinstated as was practiced in the 1995 regulations. Strongly supports requiring the regulatory authority to notify local governments and placing and funding agencies of health and safety or human rights violations when such violations result in a provisional license. Questions why the standard requires notification when multiple health and safety or human rights violations result in a provisional license. The number of violations is immaterial if they result in a provisional license.	No action necessary. Substantial compliance, as described, was a compliance category and as such would not be included in the promulgated standards. The standard was unchanged as it mirrors the language in the *Code of Virginia*.
1 provider group 1 state agency	60- Posting of Information Requested that a procedure be included in the standards that would (i) allow providers to receive advanced notice of the posting, (ii) afford the provider the opportunity to challenge the validity and accuracy of the posting; and (iii) allow the provider to include comments on the validity/accuracy of the posting on the website. Supports the standard as it helps ensure that the public is informed and understands the nature of the facilities being considered for placement of children. Suggests that the standard include more specific requirements on posting information including licensure status, reports of licensing inspections and complaint investigations. Suggests that it would be helpful if the data bases were searchable by services and age range served.	The procedures for posting information are not included in the promulgated regulation. (Information is not posted without the knowledge of the facility. The pledged corrective action is also included.) The language in this standard mirrors the *Code of Virginia* and was not changed. Information regarding licensure status is posted. Reports from licensing reviews are posted for DSS facilities. DMHMRSAS is also planning to have this information posted in the future.
2 provider groups	70 – General requirements Suggested that the term “full	The change to the standard was made to

with 13 associated individuals/providers, 4 providers and 24 associated individuals, 1 member of the public	compliance" be changed to "substantial compliance." A facility can be offering quality services but not be in full compliance to every standard.	clarify the standard. A definition of substantial compliance was added.
2 providers	Suggested that the licensing authority notify providers of applicable changes in state or federal laws.	It is the responsibility of providers to be knowledgeable of changes in state and federal laws. In a cooperative effort, licensing does notify providers of changes to laws.
1 provider	Wanted the appeal process added to in subsection G.	The appeal process is outlined in the *Code of Virginia.*
1 provider group	Suggested that 72 hours was not sufficient time for a facility to comply with the requirement to self-report lawsuits or settlements and suggested changing the time frame to 10 days.	The timeframe in subsection H was changed to 10 days.
1 state agency	Suggested that the standard be expanded to include findings of child abuse and neglect.	The current standard mirrors requirements found in the *Code of Virginia*. Facility related child abuse and neglect complaints regarding staff are already reported to the regulatory agencies.
	80- Written Corrective Action Plans	
1 provider group and 13 associated individuals/providers	Suggests adding requirements that the receipt of a facility's corrective action plan (CAP) be acknowledged in a timely manner and that once that the corrective action plan has been accepted that the violations on the website be removed.	No action taken. Facilities can send the corrective action plan by e-mail and request a return e-mail stating that the CAP has been received. Although facilities have taken steps to remediate the problems indicated in the violation notice, the violations did occur and need to remain on the website.
1 state agency	Supports the requirements of section 80 providing detail on corrective action plans as an important addition that sets meaningful, measurable and enforceable standards for remedy of violations.	No action needed.
	90 – Licenses/certificates	
4 providers and 23 associated individuals, 1 provider group and 1 member of the public	Suggested that substantial compliance be added in the standard and that in subsection B.2 that "multiple violations" be deleted as "failed to comply with corrective action plan" should	These licensing guidelines follow the *Code of Virginia*. Substantial compliance was not added here as this issue was addressed in Section 70. In Subsection B.2 "multiple violations" and "has failed to comply with a previous corrective action plan" were deleted

	suffice.	as this language was unnecessary.
1 provider group	Suggested if substantial compliance is used to determine licenses, that a license should not be modified if the provider receives a systemic deficiency if the provider is in substantial compliance with all standards.	No change made. Regulatory agencies will use substantial compliance in issuing licenses, but if there are serious systemic deficiencies affecting a major aspect of the facility then a change in the terms of the license may be warranted.
1 provider group	There needs to be a procedural mechanism for challenging license modification.	All regulatory agencies follow problem solving or appeals procedures regarding the issuance of licenses.
1 state agency	Strongly supports the change that allows a facility's license to be modified at any time based on a change in the facility's compliance. Regulatory and oversight entities must be empowered, and expected, to significantly impact providers who are jeopardizing the health, safety and welfare of individuals they are to be providing for.	No action needed.
	100- Application Fees	
1 prospective provider and 1 provider	Wants to know why application fees are being added. Is there a shortage of tax money to cover this? It is difficult to open a facility why add this fee? Need to know where money is going, how training is currently funded and a list of additional training to be provided.	No change was made. Procedures will be developed for the use of the money collected as a result of application fees. Application fees were suggested by the JLARC study.
1 provider	Application fees will be a hardship for small, non-profit agencies or homes.	An application fee is considered a normal business expense.
	120- Denial	
2 providers and 9 associated individuals	Suggests that any violation of any standard would be sufficient for denial.	No change made. There are safeguards in the *Code of Virginia* that prevent inappropriate denials due to minor violations.
1 provider group	Standard allows denial when there is any violation of any standard or law. Substantial compliance should be used.	No change made. There are safeguards in the *Code of Virginia* that prevent inappropriate denials due to minor violations. Substantial compliance does not apply to serious health and safety violations.
1 state agency	Supports the addition of "having a history of adverse licensing actions or sanctions" as a reason	No action needed.

	for denying an application.	
1 provider group	130- Revocation This section could have the unintended consequence of diverting providers' attention away from requirements directly impacting the health and safety of residents to technical compliance with other administrative requirements, if any violation of law or regulation could result in revocation.	There are safeguards in the *Code of Virginia* that prevent inappropriate denials due to minor violations. Substantial compliance does not apply to serious health and safety violations.
1 provider 1 provider group 1 locality	140 – Summary Suspension Suggested that regulatory agency be required to assist a facility restore their "good name" if the reasons for the suspension are not founded. Subject to the right of the provider to appeal the hearing officer's recommendation under Section I, hearing officer's findings should be made conclusive. Supports HB 577 issues and summary suspension.	No change made. Standard mirrors the *Code of Virginia*. No change made. Standard mirrors the *Code of Virginia*. No response needed.
1 provider	150- Variances Add "how a facility can substantially comply with the intent of the standard."	Added "how the facility can comply with the intent of the standard."
1 provider	180 – Responsibilities of the Provider Requiring approval of a document prior to implementation is burdensome and time-consuming. Recommend to define decision making plan or add technical assistance.	The requirement for the regulatory agency to approve decision-making plans was deleted. No change made. Technical assistance will be provided.
1 provider group	190- Fiscal Accountability Standard requires facilities to submit periodic in-depth financial information. Such financial information is proprietary to the facility in that it constitutes competitive information that the facility otherwise maintains as "confidential." Nothing protects this information as confidential.	AG was asked for guidance and concluded there is nothing in *Code* that would allow regulatory agencies to keep all such information confidential. DSS has some language in the code that may provide for some confidentiality. Each agency will handle as allowed by the *Code of Virginia*.
DSS Regulators	230 – Relationship to Regulatory Authority Add program director to this	This change was made.

	requirement as a change in program director can affect the facility.	
1 providers	250- Health Information Suggested changing the language regarding tuberculosis screening requirements for staff to allow the mantoux test as well as a screening assessment.	No change. All requirements regarding tuberculosis were suggested and approved by the Virginia Department of Health.
1 provider	Wanted language that would allow a certified health professional on staff to do the screenings.	No change. This would be allowed with the current language as long as the health professional was acting under the direction of a doctor. Technical assistance will be provided.
OAG	You may want to require that any individual who resides in the home, in addition to staff submit a tuberculosis evaluation.	"Or residency" was added to the standard to cover individuals that reside in the facility that are not staff.
DJJ	300- Personnel Records The term student/intern needs to included in the second sentence for consistency.	The term was added.
1 state agency	Supports requiring that documentation of required education and training be maintained in the employee record and that records of students/interns and volunteers also meet the same standards.	No action needed.
1 Behavior Management Association	310 – Staff Development Suggested that current standards are vague and should include more specific requirements regarding behavior interventions. Group recommended that 6-8 hours of initial behavior intervention training to include verbal de-escalation strategies, limit setting, how staff attitudes impact client behavior, etc. be added.	No change. Technical assistance will be included with standard. Flexibility is needed in the standard so each facility can address their own needs.
1 state agency	Supports the training requirements and the protection the requirements give children.	No action needed.
1 provider and 1 provider group	Suggested that the section be deleted as it is too burdensome.	No action taken. All training requirements were moved from other sections of the regulations to one standard so many of the requirements are not new. The JLARC study recommended additional training for staff.

1 provider	Wanted clarification if staff supervision would be counted as training.	No change. Staff supervision will not be counted as training. This will be covered in technical assistance.
2 providers, 1 provider association	Suggested that the requirement to train all staff in CPR and First Aid be changed to one staff on duty or before a staff supervises children alone. If the provider has nursing staff all staff should not have to be trained.	No change needed. Training in first aid and CPR is required for all staff to ensure the health and safety of residents. This is a basic health and safety issue. Nursing staff may not be immediately available.
2 providers, 1 locality	Questioned the availability of medication refresher training	No change needed. Refresher medication training is needed due to the significant number of medication errors that occur. It will be up to the provider to design refresher medication training to fit the needs of the facility and to improve services.
2 providers, 1 locality	Questioned what staff had to be trained in emergency procedures. Requested a definition of contractor.	No change needed. Technical assistance will be provided to identify what staff must be involved in specific training. Emergency training may have to be offered to a wider variety of staff because in an emergency it is unknown who will be available to assist residents.
2 providers	Questioned the 15 hours of additional training and suggested that the training be reduced to 8 hours. Cost of training was cited as an issue.	No action was taken. The December 2006 JLARC study recommended additional training for all staff.
1 provider, DJJ	Suggested that the term universal precautions be changed to standard precautions.	The change was made as this is now the term used by OSHA.
DJJ	Suggested that the requirement be consistent with OSHA requirements.	The standard was amended to read “or as required by other state or federal regulations.”
1 provider	Suggested that the standard that requires training in quality improvements be deleted as some facilities do not have quality improvement plans.	No change was made. Technical assistance will be provided for this standard. Quality improvement plans are now required.
1 locality	Suggested that training time frames seem arbitrary.	No change was made. Many of the training time frames were unchanged. Staff need to be prepared to handle residents and the situations that arise at facilities as soon as possible.
1 locality	Supports additions that support	The regulatory agencies will be happy to

	quality and accountability improvements such as training on appropriate siting, good neighbor policies, and community relations. They suggest that more emphasis be placed on this training.	work with this locality to develop training. Improving training can be done outside of the promulgation process.
OAG	The law does not recognize the fact that the facility has already been sited but requires "as a condition of initial licensure or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations."	Training on the siting of a children's residential facility was added.
1 provider	Suggested that employees transferring from a facility operated by the same sponsor should not be required to repeat training in confidentiality practices, decision making, the standards or procedures common to all the sponsor's facilities.	No change made. Review of procedures can be beneficial. Not all procedures are the same at all facilities operated by the same sponsor.
1 provider	320 – Staff supervision Suggested that the new requirement to develop and implement supervision policies be deleted.	No change was made. Supervision of staff is a serious issue in facilities. It is important the facility has a plan to implement supervision.

	340 – Chief Administrative Officer (CAO) 350 – Program Director 360 – Case Manager 370 – Child Care Supervisor 380 - Child Care Worker	
1 prospective provider	Thought the qualification requirements were too high for CAO. He thought the requirements were restrictive and not justified. He thought that these requirements would slow the procedure to be licensed. He suggested that Virginia use the requirements used by Maryland or North Carolina.	Revised qualification requirements to be more flexible. Added a degree in administration to the list of possible degrees. Changed the specific number of years for each type of experience to a combination of years of experience in all types of experience. Qualification requirements do not restrict facilities to Master degreed individuals, but offer a variety of options to comply with the standard. One option does not limit the type of degree an individual must have to qualify. The requirement that the lead agency could approve a combination of education and experience was not reinstated as the regulatory agencies do not have the resources to review the number of resumes that were being received. Child Welfare League of America and others recommend higher qualifications for administrative staff at children's residential facilities. The December 2006 JLARC study also recommended that the qualifications for the administrative staff be increased.
1 individual	Suggested that the requirements for program director of a child care center be substituted. The experience requirements should be minimal.	
2 provider groups with 14 associated individuals/providers, 6 providers with 29 associated individuals, 2 potential providers	Suggested that the qualification requirements were too restrictive and costly. Suggested that a degree in business be allowed for the CAO. Suggested that qualifications approved by the regulatory agency be reinstated. In some areas the applicant pool is limited for individuals with Masters degrees. One provider suggested that facilities develop policies and procedures for hiring qualified staff. Others suggested that facilities with qualified people with a variety of degrees could offer quality services.	
1 provider	Suggested that the standard should reflect an allowance for a regional director and a CAO to preside over several locations with qualified resident managers at each site. If this is not allowed cost for the facility increases.	No change was made. This issue will be handled in technical assistance. Qualified staff must be working at each location other wise child care staff are left to make programmatic decisions. This was an issue of concern in the December 2006 JLARC report.
1 provider	Wanted to know why a facility had to have a qualified CAO if they were only acting in the position.	No change was made. This issue will be handled in technical assistance. A qualified person needs to be in charge at all times.
1 provider	Suggested that the requirements for case manager do not need to	No change. The case manager needs to be qualified to provide case management

1 provider	be any higher than those required for the child care supervisor. Supports the requirement that child care workers with a college degree did not need to have experience. Suggested that an experienced child care worker should also be allowed to supervise individuals with a high school degree or GED with no experience.	services. Change was made to allow a child care worker with 1 year of professional experience working with children to supervise a child care worker with a high school diploma or GED with no experience.
2 individuals from one facility	Supported the age change from 18 to 21 for staff.	No change needed.
DJJ	Suggested that child care workers who have a high school diploma or GED but no experience but who have completed the DJJ 8 week training program be allowed to work alone.	Standard was changed as suggested.
1 provider group	360 – Case Manager, 370 – child care supervisor, and 380- child care worker The CAO and the Program director are “grandfathered” in order for facilities to keep current staff. No provision has been made to grandfather these three positions.	Wording was changed to ensure that only individuals hired or moving into the positions after the effective date of these standards must comply with these new requirements.

1 provider	420 – Buildings, Inspections and Building Plans Supports the change that allows for "swimming pool businesses" to inspect pools.	No action needed.
1 provider	430- Heating systems, Ventilation and Cooling systems Does not support the change in temperatures.	No action taken. The change in temperatures is reasonable and is consistent with other state regulations.
8 providers, DJJ	500 – Residents Privacy Suggested that video and audio monitoring needed to be conducted in different areas of secure custody facilities for the safety of the residents.	The standard was changed to allow video and audio monitoring with the approval of the regulatory agency and the Office of Human Rights, if appropriate.
1 locality and 1 provider	510 – Living Rooms and Indoor Recreation Space Expressed concerns about a new requirement of separate indoor recreation space. Existing facilities would have to be reconfigured.	No new requirement was added. Wording was changed to clarify this issue.
1 provider	590 – Preplacement Visits Supported the deletion of this standard.	No action necessary.
2 providers and 9 associated individuals 1 state agency	630 Admission Procedures Support the concept that no child should be admitted that is not a good fit for the program. Courts should be informed so the placement is not ordered. Wants the requirement that "the facility's criteria for admission shall be accessible to prospective resident, legal guardians, and placing agencies" be reinstated. Making this information available will serve to simplify the identification of an appropriate placement.	No action necessary. No change made. This is not a regulatory issue. Facilities will make their admission criteria accessible as they need placements. No problems have been encountered that this information was not available.
3 providers, DJJ 1 provider	640 – Maintenance of Residents' Records Records should be retained and disposed of in compliance with the Library of Virginia's General Schedule 24 relative to maintenance of juvenile records. Facilities operated under a medical model can not separate their case record from their health record.	No action taken. Standard states the requirements that should be followed unless specified by other state or federal requirements. The issue is covered in schedule 24. No action taken. Facilities operating under a medical model only have one health record.
1 provider and 9	680 – Application for Admission Recommend adding "along with	No action. Wording is unnecessary.

associated individuals	any additional information gathered per provider policy such as interviews or pre-placement visits."	Provider can keep any additional information that they want to with the application.
1 state agency	690 – Written Placement Agreement Agency supports adding the requirement that the educational plan for the resident and the responsibilities of all parties be delineated in the written placement agreement.	No action necessary.
7 providers, DJJ	710- Initial Objectives and Strategies This requirement should not be applicable to secure detention. DJJ regulation addresses this issue with the five day plan.	Secure detention was given an exception to this requirement.
1 provider	720- Service Plan/Quarterly Reports Recommends that instead of saying confined in post – dispositional detention that wording be changed to a post-dispositional detention program.	No change. The term used throughout the standards is "confined in post-dispositional detention."
1 state agency	Supports the definition of "individualized service plan" which "specifies measurable short and long-term goals, objectives" is a significant improvement and will make it easier to both plan and evaluate services needed and provided.	No change needed.
1 provider	720.D - Stated that this standard is difficult to understand both in content and intent. 720-I – Standard requires that the provider distribute the service plan and updates to the resident. This is not always a recommended practice.	No change was made. Technical assistance will be provided.
OAG	730- Resident Transfer between Residential facilities Located in Virginia and Operated by the Same Sponsor. What is a sponsor? Sponsor should be defined.	"Sponsor" was added to the definition of "Provider or Licensee"
2 providers and 9 associated individuals	740 – Discharge Recommended adding "unless the resident is 18 or older and able to sign himself/herself out of care.	No change. Technical assistance will be provided.
OAG	760- Case Management Services Paragraph A is confusing.	The standard was rewritten for clarity.

DSS Regulators	780 – Structured Program of Care The daily activity log was renamed to the daily communication log. Need to correct in subsection E.	Change was made.
1 state agency	790 – Health Care Procedures Supports the addition of the requirement that detailed written information concerning each resident to be available in case of an emergency as set forth in 22 VAC 42-11-790.	No change needed.
	800 – Medical Examinations and Treatment	
2 providers and 15 associated individuals and 1 provider group	Suggests that 7 days be given to have new residents screened for tuberculosis instead of at the time of placement. Otherwise residents may have to accept youth on an emergency basis. Seven days would coincide with the requirement for a physical exam in seven days of admission.	Change was made to have the screening assessment coincide with the physical exam.
1 provider	Suggest that a Mantoux tuberculin skin test be accepted instead of the screening.	No change. The language regarding tuberculosis was suggested and approved by the Virginia Department of Health (VDH).
1 provider	Supports language about the screening form.	No action needed.
1 provider	Would like to have 15 days to get the physical examination instead of 7.	No change. Time frames were established by VDH.
1 locality	New wording implies that a staff person could conduct the TB assessment.	No change. Technical assistance will be provided.
1 locality and 1 provider	Suggested that the TB requirement be placed under the physical examination requirement.	No change. TB requirements will remain separate.
1 provider	Has concerns about the TB screening requirement for short term programs and thinks if a child is enrolled in schools that require up to date immunization and TB screening this is enough. Immediate testing should be required for children not enrolled in schools or who show respiratory problems.	No change. TB is a serious problem. VDH has suggested this requirement.
1 provider	Thank you for incorporating the revisions to the tuberculosis	No action necessary.

	protocol.	
8 providers, DJJ	810- Medication Recording actual time medication is given is not considered as an industry standard. This requirement is not found in the medication training.	Actual time was deleted from the standard.
2 providers with 9 associated individuals	Proposed adding "this may be accomplished by a standing order, signed by a person authorized by law to prescribe medication, and posted where staff can easily refer to it" for clarity.	No change was made. This information is procedural and can be included in technical assistance.
1 provider	Supports the deletion of the requirement to maintain activated charcoal and syrup of ipecac.	No action necessary.
1 locality, 1 provider group	Recommended to combine 810.H and 810.G.	No action taken. Errors and refusals are separate issues.
1 provider group	The requirement to contact the prescribing professional is impractical.	The requirement to contact the prescribing professional when a resident refuses medication was deleted. Technical assistance will be provided.
1 provider group	Suggested that there be a medication training program applicable to adolescents.	No such training program currently exists.
1 state agency	Supports the additional clarifications regarding the administration and documentation of administration of medications.	No action necessary.
1 provider	810 – B Nutrition The change to "actual meals" served appears excessive and unwarranted, contributing to the increase of undue record keeping.	No change. Menus may be wrong. Documentation of actual meals served is necessary.
3 providers and 38 associated individuals, and 1 provider group	830 – Staff Supervision of Residents Recommend that other than live-in staff be added to the standard.	The change was made as recommended.
1 state agency, 1 provider and 6 associated individuals	The new requirement for a detailed plan of supervision which reflects the specific population served is an important addition and forces consideration of a lot of specifics.	No action necessary.
	850 – Searches	

1 provider group	Suggests adding "or are permitted only by authorities representing the local police force or health service." Facilities enroll residents/students who are deemed inappropriate for public schools yet these facilities are not permitted the same search procedures that public schools are permitted to implement. This would be a preventative remedy not an attempt to invade the resident's privacy. This is an example of not having the necessary tools. Such a limitation on supervisory authority places a liability on the residential facility.	No change made. Conducting strip searches is a violation of basic human rights and conflicts with the overall philosophy of the human care of children. Liability also exists if strip searches are allowed to be performed.
	860 – Behavior Support	
11 providers	Recommend that secure detention be exempt from this requirement.	Secure detention and the Reception and Diagnostic Center were excluded from this standard. The average length of stay in detention is 23 days.
1 provider	Disagrees with the implementation of behavior support plans. Doesn't see the necessity for another plan. Behavior is not always a problem. If the family and child recognized successful strategies for problem behavior they wouldn't be utilizing the psychiatric residential level of care.	No change made. Helping the child manage his/her own care is the accepted philosophy of child welfare. Behavior support planning is consistent with this provider's program.
1 state agency	The change for "management of resident" to "Behavior Support" is indicative of the improvements to this section and to the supporting section on behavior interventions. The new standards stress the need to identify both challenging and positive behaviors and to identify triggers for behavior and successful intervention practices. These and the intervening sections relating to behavioral interventions reflect the intent to place less focus on "management" and "restraint" and more on helping the child control his/her own behavior.	No change required.
	870 – Timeout	
2 providers	Secure detention should be excluded.	No change made. This requirement is necessary for the safety of children.

1 provider, 1 locality	Timeout should be based on the resident's chronological and developmental level and current emotional state – staff checks should remain at 30 minutes instead of changing to 15 minutes.	No change made. This requirement is necessary for the safety of children.
1 state agency	Strongly supports the time change in this standard.	No action necessary.
	900 – Behavioral Interventions	
1 provider	In subsection J recommend deleting language regarding an individual experienced in training staff in the management of behavior for the population served.	Language was deleted. Technical assistance will be provided.
1 state agency	The change for "management of resident" to "Behavior Support" is indicative of the improvements to this section and to the supporting section on behavior interventions. The new standards stress the need to identify both challenging and positive behaviors and to identify triggers for behavior and successful intervention practices. These and the intervening sections relating to behavioral interventions reflect the intent to place less focus on "management" and "restraint" and more on helping the child control his/her own behavior.	No action necessary.
	940 – Recreation	
4 providers and 9 associated individuals	Recommended different ways to safeguard children other than requiring a life guard for swimming activities such as evaluate children for swimming proficiency and require non-swimmers to wear floatation devices or just require "appropriate supervision."	No change made. Being a good swimmer does not eliminate the need for a lifeguard. This is a safety and health issue. JLARC also made the recommendation that a lifeguard be required.
2 providers and 9 associated individuals, 1 member of the public	Standard appears burdensome in recordkeeping. Recordkeeping may discourage valuable and often unforgettable experiences that are inevitably associated with such trips. The impact of these standards in reducing or discouraging such trip planning will undermine the facility's attempt to provide troubled youth with positive experiential learning	No change was made. Basic adequate planning ensures that supervision, medical needs, and other safety issues are met while residents are off campus on overnight activities. Events harmful to residents have occurred on overnight trips that have necessitated these requirements. Wording of the standards was developed in consultation with facilities that have experience with well-planned trips.

DSS Regulators	opportunities. Delete the second “and reason”.	Correction was made.
1 provider association	1000 – Resident visitation at the Homes of Staff Suggested that resident visits to the homes of staff be prohibited.	No change was made. Standard allows flexibility for programs that close during holiday periods.
OAG	1020 – Reports to Court This regulation relates to foster care plans when the provider has been awarded custody pursuant to the *Code of Virginia*. What provision is being referenced?	The standard was deleted as no facilities take custody of the children.
1 state agency	1030 (new 1020) – Serious Incident Reports 1040 (new 1030) – Suspected Child Abuse or Neglect The revisions to these sections enhance the safety of residents by ensuring that the appropriate enforcement and regulatory agencies are made aware of incidents and have the opportunity for timely responses.	No action required.
1 state agency	1060 (new 1050) – Emergency and Evacuation Procedures The increased focus and detail regarding emergency preparedness and response is welcome. The requirement to coordinate with the local emergency coordinator is critical in ensuring that plans are coordinated and that both parties have an understanding of the needs and expectations of the other. It also requires the necessary detailed analysis of specific hazards and capabilities. However, preparation for epidemics/pandemics is not specifically addressed (although is certainly an “other condition”). VOPA recommends adding language referencing preparation for epidemics and pandemics recognizing that it is a matter of when, not if, they will occur. Congregate care facilities will be particularly impacted by such disasters.	No change was made. The requirements for this standard contain the language agreed upon for state agencies. Technical assistance will be provided and will include the examples of epidemics/pandemics as other conditions.

1 provider	1090 (new 1080) – Campsite Programs or Adventure Activities. Change language from within 72 hours of the group's return to something more reasonable such as 4 traditional business days of the group's return. Staff members and leaders that go on extended wilderness trips return and frequently are off-duty for 2-3 days after the trip.	No change. This standard was written with the consultation of programs who regularly take this kind of trip. Waiting to conduct the trip debriefing may reduce the therapeutic value of the trip.
1 provider	Suggests that only the trip leader receive wilderness first aid. The course is expensive and only offered on a limited basis.	No change. This is a basic health and safety issue. There is no guarantee that the trip leader will be with the child that encounters the medical problem. Programs that take wilderness trips on a regular basis suggested these requirements. Technical assistance will be provided.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substance (e.g. hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.	*Deleted the following definitions as they are no longer found in the regulation or are unnecessary: adaptive behavior, application, boot camp, chemical restraint, child with special needs, child with a visual impairment, client, confinement, intrusive aversive therapy, public funding, responsible adult, right, shall, and shall not. Added the definition of annual. "Annual" means within 13 months of the previous event or occurrence. Revised the definition of aversive stimuli. "Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substance (e.g. hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity which when applied to a resident are noxious or painful to the individual, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any

			part of the body or with an implement or pinching, pulling, or shaking the resident.
		Behavior management" means those principles and methods employed by a licensee to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner, in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan.	The definition of behavior management was renamed behavior support. Behavior support" means those principles and methods employed by a licensee to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner, in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan. Added a definition of behavior support assessment as a requirement for a behavior support assessment or plan is being added as a protection to children and to ensure facility staff can manage the children they accept. "Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.
		"Child placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.	"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes. "Public welfare" was deleted as the term is no longer used.
		"Residential facility for children" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and which is required to be licensed or certified by the *Code of Virginia* except: 1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds; and 2. Private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse, 12 VAC 35-102-10 et. seq. Group homes are included under this definition of residential facility for children. Group home means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12 residents.	Changed "Residential Facility for Children" to "Children's Residential Facility" and corrected the title of the DMHMRSAS standards. "Children's residential facility " or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and which is required to be licensed or certified by the Code of Virginia except: 1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds; and 2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services and the Individual and Family Development Disabilities Support Waiver, 12 VAC 35-105-10 et seq. The definition of "group home" was

			separated from the definition of "children's residential facility".
		"Compliance Plan" means violations documented by the regulatory authority and the facility's corrective action to the documented violations within a specified time frame.	"Compliance Plan" was changed to "Corrective Action Plan" and wording was changed for clarification. "Corrective action plan" means violations documented by the regulatory authority and the facility's submitted pledged corrective action to the documented violations cited by the regulatory authority.
		"Confined in detention with a suspended commitment to the Department of Juvenile Justice" means that a court has committed the juvenile to the Department of Juvenile Justice but has suspended the commitment and ordered the juvenile confined in a local detention home for a period not to exceed six months as found in §16.1-284.1.B in the *Code of Virginia*.	"Confined in detention with a suspended commitment to the Department of Juvenile Justice" was changed to "Confined in post-dispositional detention." And the definition was updated. "Confined in post-dispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in §16.1-284.1.B of the Code of Virginia. Added "DJJ" means the department of Juvenile Justice. A definition of "heath record" was added. "Health record" means the file maintained by a provider which contains personal health information.
		"Human research" means any systematic investigation utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.	The definition of "human research" was updated to be consistent with the "Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services." "Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR46.101(b).
		"Independent living program" means a program that is specifically approved to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.	"Independent living program" was updated. "Independent living program" means a competency-based program that is specifi-cally approved by the regulatory agency to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.
		"Licensee" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.	The definition of "licensee" was changed to include the term "provider" and "sponsor". "Provider or Licensee or Sponsor" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the regulatory and stat-utory requirements relating to the facility.
		"Mechanical restraint" means use of devices to	The term "mechanical restraint" was updated.

		restrict the movement of an individual or the movement or normal function of a portion of the individual's body, but does not include the appropriate use of those devices used to provide support for the achievement of functional body position or proper balance and those devices used for specific medical and surgical treatment or treatment for self-injurious behavior.	"Mechanical restraint" means the use of devices that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.
		"Medication error" means that an error has been made in administering a medication to a resident when any of the following occur: (i) the wrong medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident.	A clarifying sentence was added to "medication error". "Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.
		"Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided evidence that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, which provides to the contrary.	Wording was changed in "Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, which provides to the contrary.
			"Personal health information" definition was added because of federal requirements. "Personal health information" means the information that encompasses the universe of oral, written or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.
			A definition of "Pharmacological restraint" was added. "Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when the individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
		"Physical restraint" means the restraint of a resident's body movements by means of physical contact by staff members. Physical restraint does not include physical prompts or guidance used with individuals with diagnosed mental disabilities in the education or training of adaptive behaviors. (See definition of "adaptive behavior.")	The updated definition states "Physical restraint" (also referred to as a "manual hold") means use of a physical intervention or "hands-on" hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk. This definition is consistent with other state regulations.
		"Program" means a combination of procedures or	The definition of "program" was replaced

		activities carried out in order to meet a specific goal or objective.	with the definition of "structured program of care". "Structured Program of Care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.
		"Regulatory authority" means the department or state board that is responsible under the *Code of Virginia* for the licensure or certification of a residential facility for children.	"Agency" was added to the definition of "regulatory authority" as this term is also used in the regulations. "Regulatory authority or agency" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a children's residential facility.
		"Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis. Resident includes children making preplacement visits to the facility. When the term is used, the requirement applies only to individuals who have been admitted to the facility and those making preplacement visits.	Unnecessary wording was deleted from the definition of resident. The requirement for preplacement visits was deleted from the standards. "Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis.
		"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the legal guardians temporary relief from responsibility for their direct care.	Parents were added to the definition of respite care as some children will becoming from their parents home. "Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.
		"Rest day" means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Two successive rest days means a period of not less than 48 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive rest day immediately following the second shall consist of not less than 24 additional consecutive hours.	The definition of "rest day" was simplified. "Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.
		"Routine admission" means the admittance of a child following evaluation of an application for admission~~,~~ completion of preplacement activities, and execution of a written placement agreement.	Unnecessary wording was deleted from "routine admission." The requirement for preplacement visits has been deleted from the standards. "Routine admission" means the admittance of a child following evaluation of an application for admission~~,~~ and execution of a written placement agreement.
		"Rules of conduct" means a listing of rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.	Clarifying language was added to "rules of conduct". "Rules of conduct" means a listing of a facility's rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.
		"Sanitizing agent" means a laundry bleach with an active ingredient of 5.25% sodium hypochlorite.	The definition of "sanitizing agent" was updated. "Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.
		"Seclusion" means placing a resident in a room with	The definition of "seclusion" was updated.

		the door secured in any manner that prevents the resident from opening it.	"Seclusion" means the involuntary placement of an individual alone, in an area secured by a door that is locked or held shut by a staff person by physically blocking the door or by any other physical or verbal means so that the individual cannot leave it. This definition is consistent with other state regulations.
		"Secure custody facility" means a detention home or a juvenile correctional center.	Clarifying language was added to the definition of "secure custody". "Secure custody facility" means a detention home or a juvenile correctional center with physical barriers that regulate movement.
		"Standard" means a statement which describes in measurable terms a required minimum performance level.	Clarifying language was added to the definition of "standard". "Standard" means a statement which describes in measurable terms a required minimum performance level. The term standard and the term regulation may be used interchangeably. Definition of substantial compliance was added as the term is used in the standards. "Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole. "Temporary contract worker" was added as the term is used in the standards. "Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.
		"Timeout" means temporarily removing a resident and placing the resident alone in a special timeout room that is unfurnished or sparsely furnished and which contains few reinforcing environmental stimuli.	The definition of "timeout" was updated. "Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior. This definition is consistent with other state regulations.
		"Treatment" means any action which helps a person in the reduction of disability or discomfort, the amelioration of symptoms, undesirable conditions or changes in specific physical, mental, behavioral or social functioning.	The definition of "treatment" was updated. "Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.
		"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the	Unnecessary language was deleted from the definition of "variance". "Variance" means temporary or permanent waiver of

		standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship; (ii) the standard is not specifically required by statute or by the regulations of another government agency; and (iii) resident care will not be adversely affected. The denial of a request for a variance is appealable when it leads to the denial or revocation of a license or certificate. "Wilderness camp" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, and community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning and therapy with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.	compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected. A definition of volunteers was added as the term is used in the standards. "Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation. A correction was made in the definition of "wilderness program". "Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, or community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.
NA	20	NA	22 VAC 42-11-20. Interdepartmental Cooperation. The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services shall assist and cooperate with each other in the licensing and certification of children's residential facilities. This section was added as consistent regulation of children's residential facilities will promote the health, safety and welfare of the residents.
20	30	Applications A. Initial applications 1. A completed application shall be submitted at least 60 days in advance of the planned opening date. 2. The applicant shall document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission. 3. A corporation, unincorporated organization or association, an individual or a partnership proposing to operate a facility shall submit with the initial application evidence of	A. Initial applications 1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources, or, a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a description of the program; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; copy of floor plan with dimensions of rooms; a certificate of occupancy; current health inspection;

		financial responsibility and sufficient funds to operate. This shall include: a. A working budget showing projected revenue and expenses for the first year of operation; and b. A balance sheet showing assets and liabilities. 4. Facilities operated by state or local government agencies, boards and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.	evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and if required by the regulatory authority, references for three officers of the board, if applicable. This information shall be submitted to and approved by the lead regulatory agency in order for the application to be considered complete. 2. All initial applications which are not complete within 12 months shall be closed. 3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year. 4. Currently licensed providers shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed. • For clarification, a complete listing of documents that are required for an initial application was added to the section. • Added a requirement that new applications which are not complete in 12 months will be closed to clarify procedures. • Added a requirement that a provider must substantially comply with applicable regulations before new facilities can be licensed to clarify procedures.
25	40	The investigation The regulatory authority or regulatory authorities will arrange and conduct an on-site inspection of the facility; a thorough review of the services; and investigate the character, reputation, status, and responsibility of the applicant.	The regulatory authority or regulatory authorities shall arrange and conduct an on-site inspection of the facility and a thorough review of the services, and <u>an investigation</u> of the character, reputation, status, and responsibility of the applicant. Wording was improved.
30	50	Visitation of facilities. Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.	Review of Facilities. A. Representatives of the regulatory authorities shall make announced and unannounced reviews during the effective dates of the license/certificate. The purpose of these reviews is to monitor compliance with applicable standards. B. The regulatory authority shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license or certificate to provisional status. • Departments was changed to regulatory authorities as that is

			the term defined in the standards • B was added as it is now a requirement in the *Code of Virginia.*
NA	60	NA	Posting of Information. A. Information concerning the application for initial licensure of children's residential facilities shall be posted on the Interdepartmental Regulation web site, by locality. B. An accurate listing of all licensed or certified facilities including information on renewal, denial, or provisional licensure, services and identification of the lead regulatory authority shall be posted on the Interdepartmental Regulation web site, by locality. New requirements were added as required by the *Code of Virginia*.
35	70	General requirements A. The facility shall demonstrate full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonable safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances which pose an immediate and direct danger to residents. B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. Corporations not organized and empowered solely to operate residential facilities for children shall provide for such operations in their charters. C. The facility shall comply with the terms of its license or certificate. G. Intermediate sanctions authorized by statute may be imposed at the discretion of the regulatory authorities in addition to the sanctions specified in this chapter.	A. The provider shall demonstrate <u>substantial</u> compliance with these standards to demonstrate that its program and physical plant provides reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances which pose an immediate and direct danger to residents. Wording was changed to clarify substantial compliance. B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. The second sentence in B was deleted as it is no longer required. C. The provider shall comply with the terms of its license or certificate. The term provider was used for consistency. G. Intermediate sanctions authorized by statute may be imposed at the discretion of the regulatory authorities No additional sanctions are specified so the wording was deleted. H. Each provider shall self-report within 10 days, to the lead regulatory agency, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to

			the health and safety or human rights of residents. The requirement to self-report lawsuits was added as it is a requirement in the *Code of Virginia*. I. The provider shall comply with all other applicable federal, state, or local laws and regulations. J. The provider's current policy and procedure manual shall be readily accessible to all staff. K. The provider shall comply with its own policies and procedures. Subsections I, J, and K were added to clarify expectations.
NA	80	NA	A. Facilities regulated by the Department of Juvenile Justice shall comply with the Board of Juvenile Justice's certification regulations governing corrective action plans. B. If there is noncompliance with applicable standards during an initial or ongoing review or investigation, the regulatory authority shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan. C. The provider shall submit to the regulatory authority and implement a written corrective action plan for each standard for which the provider is found to be in noncompliance. D. The corrective action plan shall include a: 1. Description of each corrective action to be taken and the person responsible for implementation; 2. Date of completion for each action; and 3. Signature of the person responsible for oversight of the implementation of the pledged corrective action. D. The provider shall submit the corrective action plan to the regulatory authority within 15 business days of the issuance of the licensing report. Extensions may be granted by the regulatory authority when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action shall be required if the regulatory authority determines that the violations pose a threat to the health, safety or welfare of residents. E. A corrective action plan shall be approved by the regulatory authority. The provider shall have an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved. For clarity, added a section regarding corrective action plans stating what is required and time frames for the return of

			the corrective action plan.
40	90	Licenses/certificates. B. Facilities Regulated by DOE, DMHMRSAS, or DSS 1. A triennial license or certificate shall be issued when the facility (i) applies for renewal while holding an annual or triennial license or certificate and (ii) substantially meets or exceeds the requirements of the interdepartmental standards and other applicable regulations and statutes. 2. Annual Licenses/Certificates. a. An annual license or certificate shall be issued when the facility: (1) Applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of the interdepartmental standards and other applicable regulations and statutes; or (2) Applies for renewal while holding an annual or triennial license or certificate and one systemic deficiency has been identified during the licensure or certification period without the facility taking acceptable, documented corrective action; b. An annual license or certificate may be issued to a facility whose sponsor requests establishment of a new facility to serve the same target population as that currently being served by the sponsor in facilities regulated through the Interdepartmental Regulatory Program. c. An annual license or certificate may be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined. 3. Provisional Licenses/Certificates a. A provisional license or certificate shall be issued when the facility: (1) Applies for renewal while holding an annual or triennial license or certificate, and during the licensure or certification period there have been two or more occasions when systemic deficiencies have been identified without the facility taking acceptable, documented corrective action; or (2) Applies for renewal while holding a conditional license or certificate and, during the licensure or certification period, has demonstrated that its programs and services do not substantially comply with the interdepartmental standards or other applicable regulations or statutes. b. A provisional license or certificate may be renewed, but a provisional license or certificate and any renewals thereof shall not exceed a period of six successive months for all provisional licenses and renewals combined. c. A facility holding a provisional license or certificate shall demonstrate progress toward compliance. 4. Conditional Licenses/Certificates a. A conditional license or certificate shall be issued to a facility which demonstrates an acceptable level of compliance and is: (1) Beginning initial operation and whose sponsor is not operating one or more additional facilities regulated through the Interdepartmental Regulatory Program, or (2) Sponsored by a currently established Inter-departmental Regulatory Program sponsor who is beginning operation, at a new or currently regulated site, of a program serving a different target	B. Facilities Regulated by DOE, DMHMRSAS, or DSS. 1. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements, but has not demonstrated compliance with all of the Interdepartmental Standards. A conditional license shall not exceed six months unless allowed by the Code of Virginia. 2. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with the Interdepartmental Standards, or other applicable regulations; has violations of licensing standards that pose a threat to the health or safety of residents being served; has two or more systemic deficiencies. a. A provisional license may be issued at any time. b. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia. 3. An annual license or certificate: a. Shall be issued when the provider applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of the Interdepartmental Standards and other regulations and statutes. b. May be issued at any time, if the provider has received one systemic deficiency. c. May be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined. 4. A triennial license or certificate shall be issued when the provider: a. Applies for renewal while holding an annual or triennial license or certificate and b. Substantially meets or exceeds the requirements of the Interdepartmental Standards and other applicable regulations and statutes. C. The term of a facility's license or certificate may be modified at any time during the licensure or certification period based on a change in the facility's compliance with these standards and other applicable statutes and regulations. • Subsection A remained the same. • Allows the facility's license or certificate to be modified during the licensure or certification period if there is a change in compliance. This will allow the licensure period to be reduced if a facility is not in compliance with standards. (Changes regulation to be consistent with *Code of Virginia*.) • *All references to corrective

		population than that being served by the sponsor. b. A facility holding a conditional license or certificate shall demonstrate progress toward compliance. c. A conditional license or certificate may be renewed, but a conditional license or certificate and any renewals thereof shall not exceed a period of six successive months for all conditional licenses and renewals combined.	action regarding systemic deficiencies were deleted as most systemic deficiencies are cited at the time the license is issued. There is no time to take corrective action.
50	100	There shall be no fee to the licensee for licensure or certification.	A. There shall be a $500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn, all subsequent initial applications shall require another $500 fee. B. There shall be a $100 nonrefundable renewal application fee. C. A renewal fee shall not be charged to providers directly following the issuance of a conditional license. D. The application fee shall not apply to state or locally owned, operated, or contracted facilities. E. Application fees shall be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities. Established a $500 fee for initial application fee and a $100 fee for renewal application. No fees will be charged to state or locally operated facilities. Fees to be used for training as suggested by the December 2006 JLARC study.
60	110	Modification. A. The conditions of a license or certificate may be modified during the term of the license or certificate with respect to the capacity, residents' age range, facility location, or changes in the services. B. The licensee shall submit a written report of any contemplated changes in operation which would affect the terms of the license or certificate or the continuing eligibility for licensure or certification. C. A change shall not be implemented prior to approval by the regulatory authority. A determination will be made as to whether changes will be approved and the license or certificate modified accordingly or whether an application for a new license or certificate must be filed. The licensee will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required.	A. The conditions of a license or certificate may be modified during the term of the license or certificate with respect to the capacity, residents' age range, facility location, gender, or changes in the services. Limited modifications may be approved during the conditional licensure or certification period. B. The provider shall submit a written report of any contemplated changes in operation which would affect the terms of the license or certificate or the continuing eligibility for licensure or certification to the lead regulatory authority. C. A change shall not be implemented prior to approval by the regulatory authority. The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required. • A sentence was added to inform providers that only limited modifications will be made during the conditional license. • Clarification was added to subsection B. • A sentence was deleted in subsection C as it was redundant.
70	120	Denial. A. An application for licensure or certification may	A. An application for licensure or certification may be denied when the

		be denied when the applicant: 1. Violates any provision of applicable laws or regulations made pursuant to such laws; 2. Has a founded disposition of child abuse or neglect after the appeal process has been completed; 3. Has been convicted of a crime listed in §§ 37.1-183.3 and 63.1-248.7:2 of the Code of Virginia; 4. Has made false statements on the application or misrepresentation of facts in the application process; 5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials. B. If denial of a license or certificate is recommended, the facility will be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.	applicant: 1. Violates any provision of applicable laws or regulations made pursuant to such laws; 2. Has a founded disposition of child abuse or neglect after the appeal process has been completed; 3. Has been convicted of a crime listed in §§ 37.2-416 or 63.2-1726 of the *Code of Virginia*; 4. Has made false statements on the application or misrepresentation of facts in the application process; 5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials; or 6. Has a history of adverse licensing actions or sanctions. • Code sections were updated. • A new requirement was added to allow the denial of applicants that have adverse licensing histories.
80	130	Revocation. A. The license or certificate may be revoked when the licensee: 1. Violates any provision of applicable laws or applicable regulations made pursuant to such laws; 2. Permits, aids or abets the commission of any illegal act in the regulated facility; 3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; 4. Deviates significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or fails to correct such deviations within the specified time; or 5. Engages in a willful action or gross negligence which jeopardizes the care or protection of residents. B. If revocation of a license or certificate is recommended, the facility will be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process .	A. A license or certificate may be revoked when the provider: 1. Violates any provision of applicable laws or regulations; 2. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; 3. Deviates significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or fails to correct such deviations within the specified time; or 4. Engages in a willful action or gross negligence which jeopardizes the care or protection of residents. B. If revocation of a license or certificate is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process. • "Licensee" was changed to "provider." • A repetitive section was deleted (former A.2).
NA	140	NA	Summary Suspension. A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the lead regulatory authority agency head may issue an order of summary suspension of the license or certificate to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding. B. Prior to the issuance of an order of

			summary suspension, the regulatory authority shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The lead regulatory authority shall schedule the time, date, and location of the administrative hearing with the hearing officer. C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth: 1. The time, date, and location of the hearing; 2. The procedures for the hearing; 3. The hearing and appeal rights; and 4. Facts and evidence that formed the basis for the order of summary suspension. D. The hearing shall take place within three business days of the issuance of the order of summary suspension. E. The regulatory authority shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license or certificate should be summarily suspended, to the lead regulatory agency head within five business days of the hearing. G. The lead regulatory agency head shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer. H. The lead regulatory agency head shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested either: 1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations, and (ii) notice that the children's residential facility may appeal the lead regulatory agency head's decision to the appropriate circuit court no later than 10 days following issuance of the order; or 2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded. I. The facility may appeal the lead regulatory agency head's decision on the summary suspension to the appropriate circuit court no more than ten days after

			issuance of the final order. J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension. K. At the time of the issuance of the order of summary suspension, the lead regulatory authority shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action. Added the procedures for summary suspension to be consistent with *Code of Virginia*. In egregious situations, this will allow the lead regulatory agency to remove the residents during the pendency of the revocation, denial, or other action.
90	150	Variances. A. Any request for a variance shall be submitted in writing to the regulatory authority. B. A variance shall not be effected prior to approval of the regulatory authority.	A. Any request for a variance shall be submitted in writing to the regulatory authority and shall include a: 1. Justification why enforcement of the standard would create an undue hardship; 2. How the facility can comply with the intent of the standard; and 3. Justification why resident care would not be adversely affected if the variance was granted. B. A variance shall not be implemented prior to approval of the regulatory authority. The elements of a variance request were added, as requested by regulators.
95	160	Investigation of complaints and allegations The four departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Service; and Social Services are responsible for complete and prompt investigation of all complaints and allegations at the facilities where they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law enforcement authority.	The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for complete and prompt investigation of all complaints and allegations made against providers for which they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law enforcement authority. Changes were made to improve wording.
100	170	Governing body. A. The facility shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee. B. The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.	A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee. B. The provider shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the provider. “Facility” and “Licensee” were changed to provider.

110	180	Responsibilities of the licensee. A. The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for administrative direction of the facility. B. A qualified staff member shall be designated to assume responsibility for operation of the facility in the absence of the chief administrative officer. C. The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the target population and the program to be offered. D. The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility. E. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.	Responsibilities of the Provider. A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility. B. The provider shall develop and implement a written decision making plan which shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart. C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered. D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness, on a systematic and on-going basis. The provider shall implement improvements when indicated. • The requirement to designate a qualified staff person to assume responsibility of the chief administrative officer in his absence was replaced with a requirement to develop and implement a decision making plan including an organizational chart to clarify who can make decisions. • The requirement of the provider to review the program annually was revised to require that the provider develop policies and procedures to evaluate service quality and effectiveness to ensure that providers are evaluating their services. • The provider is required to make improvements as identified by the on-going evaluation.
120	190	Fiscal accountability. A. Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships shall prepare, at the end of each fiscal year: 1. An operating statement showing revenue and expenses for the fiscal year just ended; 2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and 3. A balance sheet showing assets and liabilities for the fiscal year just ended. B. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.	A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare, at the end of each fiscal year: 1. An operating statement showing revenue and expenses for the fiscal year just ended; 2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and 3. A balance sheet showing assets and liabilities for the fiscal year just ended. B. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records. C. The provider shall develop and implement written policies and procedures

			that address the day-to-day handling of facility funds to include: 1. Handling of deposits; 2. Writing of checks; and 3. Handling of petty cash. Subsection C was added. The provider is required to develop policies and procedures to address the day-to-day handling of funds to prevent problems.
130	200	Insurance. A. The facility shall maintain liability insurance covering the premises and the facility's operations. B. The facility shall maintain liability insurance on vehicles operated by the facility. C. The members of the governing body and staff who have been authorized to handle the facility's funds shall be bonded or otherwise indemnified.	A. The provider shall maintain liability insurance covering the premises and the facility's operations. B. The provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff. C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds shall be bonded or otherwise indemnified against employee dishonesty. • "Facility" was changed to "provider" for consistency. • "Against employee dishonesty" was added for clarity. • A requirement was added to ensure that staff cars used to transport residents are insured as an added protection.
140	210	Fund-raising. The facility shall not use residents in its fund-raising activities without written permission of the legal guardian and the permission of residents 14 years or older.	The provider shall not use residents in its fund-raising activities without written permission of the legal guardian and the permission of residents 14 years or older. "Facility" was changed to "provider" for consistency.
150	220	Weapons. The facility shall have and implement a written policy governing the possession and use of firearms, pellet guns, air rifles, and other weapons on the facility's premises. The policy shall provide that no firearms, pellet guns, air rifles, or other weapons shall be permitted on the premises unless the weapons are: 1. In the possession of licensed security personnel, 2. Kept securely under lock and key, or 3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.	The provider shall develop and implement written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and during facility related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility sponsored activities unless the weapons are: 1. In the possession of licensed security personnel or law enforcement officers; 2. Kept securely under lock and key; or 3. Used by a resident with the legal guardian's permission, under the supervision of a responsible adult, in accord with policies and procedures developed by the facility for the weapons' lawful and safe use. • "Have and implement" was changed to "develop and Implement" to be consistent with other standards. • Added the possession of licensed law enforcement officers, as facilities sometimes

			have officers come to their facilities. • Added facility related activities to cover when residents and staff may be off premises. • Added a requirement that if residents are to use weapons, permission from the resident's legal guardian is required. • Wording was improved.
160	230	Relationship to regulatory authority. A. The facility shall submit or make available to the regulatory authority such reports and information as the regulatory authority may require to establish compliance with these interdepartmental standards and other applicable regulations and statutes. B. The governing body or its official representative shall notify the regulatory authorities within five working days of: 1. Any change in administrative structure or newly hired chief administrative officer; and 2. Any pending changes in the program including, but not necessarily limited to: the setting where services are performed, the services provided, staff qualifications, organizational structure, target population, or capacity.	A. The provider shall submit or make available to the regulatory authority such reports and information as the regulatory authority may require to establish compliance with these interdepartmental standards and other applicable regulations and statutes. B. The governing body or its official representative shall notify the regulatory authorities within five working days of any change in administrative structure or newly hired chief administrative officer or program director. • This standard was revised to make it more consistent with the section on modification. • "Program director" was added as this is a key position in a children's residential facility.
170	240	Facilities Serving Persons Over the Age of 17 Years Facilities which are approved to serve persons over the age of 17 years shall comply with these interdepartmental standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing, programs, services, and supervision for such persons are provided separately from those for the residents.	Persons Over the Age of 17 Years Facilities which are approved to serve persons over the age of 17 years shall comply with these interdepartmental standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing, programs, services, and supervision for such persons are provided separately from those for the <u>other</u> residents. "Other" was inserted for clarity.
180	250	Health information. A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. B. Initial Screening for Tuberculosis 1. Each individual shall obtain an evaluation documenting the absence of tuberculosis in a communicable form no earlier than 30 days before or no later than seven days after employment or contact with residents. 2. Each individual shall annually submit the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination, as deemed appropriate by the examining physician, documenting that the individual is free of tuberculosis in a communicable form. 3. The documentation shall include all information contained on a "Report of Tuberculosis Screening" form recommended by the Virginia Department of Health. 4. An evaluation shall not be required for an individual who (i) has separated from employment	A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information is to be handled, maintained and stored in a fashion which maintains confidentiality of the information at all times. B. Tuberculosis Evaluation. 1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days. 2. Each individual shall annually submit the results of a -screening assessment,

		with a facility licensed or certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening to his new employer. C. Subsequent Evaluations for Tuberculosis 1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department. 2. An individual who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis. D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis. E. The facility shall report any active case of tuberculosis developed by a staff member to the local health department.	documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. C. Subsequent Evaluations for Tuberculosis 1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department. 2. An individual who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis. D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis. E. The provider shall report any active case of tuberculosis developed by a staff member or resident to the local health department. • Added that health information should be maintained in a confidential manner. • Each new staff person should obtain a screening assessment for TB as evidenced by a completed form with the elements contained on a current risk assessment screening form published by the Department of Health. The risk assessment must be completed at the time of hire and no earlier than 30 days before the date of hire. Deletes exceptions. This is the Department of Health's recommendation. • Each staff person shall have an annual screening assessment as evidenced by a completed form containing the elements of the current risk assessment screening form published by the Department of Health. • "Or residency" was added so individuals other than staff or residents who live in the facility would also be required to have a TB evaluation. • The resident was added in subsection E as any case of TB must be reported. Protects children from TB and protects staff from unnecessary medical procedures.
190	260	Physical or mental health of personnel. A. The licensee or the regulatory authority may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental or emotional health may jeopardize the care of	A. The provider or the regulatory authority may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental or

		residents.	emotional health may jeopardize the care of residents. "Licensee" was changed to "provider" for consistency.
200	270	Qualifications. A. Standards establishing minimum position qualifications shall be applicable to all facilities. In lieu of the minimum position qualifications contained in this chapter, facilities subject to (i) the rules and regulations of the Virginia Department of Personnel and Training, or (ii) the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority. B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards shall: 1. Meet the qualifications of the position or positions; 2. Fully comply with all applicable standards for each function; and 3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions. C. When services or consultation are obtained on a contractual basis they shall be provided by professionally qualified personnel.	A. Standards establishing minimum position qualifications shall be applicable to all providers. In lieu of the minimum position qualifications contained in this chapter, providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority. B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards after the effective date of these standards shall: 1. Meet the qualifications of the position or positions; 2. Fully comply with all applicable standards for each function; and 3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions. C. When services or consultation are obtained on a contractual basis they shall be provided by professionally qualified personnel. • Updates the name of the Virginia Department of Personnel and Training to Human Resource Management • "Facilities" is changed to "providers". • "After the effective date of these standards" was added to ensure that all current staff would be grandfathered.
210	280	Job descriptions. A. There shall be a written job description for each position which, at a minimum, includes the: 1. Job title; 2. Duties and responsibilities of the incumbent; 3. Job title of the immediate supervisor; and 4. Minimum knowledge, skills and abilities required for entry level performance of the job. B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.	A. There shall be a written job description for each position which, at a minimum, includes the: 1. Job title; 2. Duties and responsibilities of the incumbent; 3. Job title of the immediate supervisor; and 4. Minimum education, experience, knowledge, skills, and abilities required for entry level performance of the job. B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment. Added a requirement that minimum education and experience be added to the job description to insure that staff have the proper qualifications

220	290	Written personnel policies and procedures. A. The licensee shall approve written personnel policies and make its written personnel policies readily accessible to each staff member. B. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsi-bilities of each position possess the knowledge, skills and abilities specified in the job description for the position. C. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for: 1. Handling accusations against staff; and 2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.	A. The provider shall have and implement provider approved written personnel policies and make its written personnel policies readily accessible to each staff member. B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position. • Clarified that the provider have approved policies and procedures, as some providers cannot approve their own policies and procedures because they are part of a bigger organization e.g. local government. • Added a requirement that individuals hired for a position have the education and experience for the position as described in the job description. • Deleted requirements regarding child abuse and neglect, because they are in another section.
230	300	Personnel records. A. Separate up-to-date written or automated personnel records shall be maintained for each employee and volunteer and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations. B. The records of each employee shall include: 1.A completed employment application form or other written material providing the individual's name, address, phone number, and social security number; 2.Educational background and employment history; 3. Written references or notations of oral references; 4. Reports of required health examinations; 5. Annual performance evaluations; 6. Date of employment and separation; and 7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations. C. Personnel records shall be retained in their entirety for three years after separation from employment, contractual service, or volunteer service.	A. Separate up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, student/interns and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations. B. The records of each employee shall include: 1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier; 2. Educational background and employment history; 3. Written references or notations of oral references; 4. Reports of required health examinations; 5. Annual performance evaluations; 6. Date of employment for each position held and separation; 7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations; 8. Documentation of educational degrees and of professional certification or licensure;

			9. Documentation of all training required by these standards and any other training received by individual staff; and 10. A current job description. C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service. • Added that providers keep personnel records on students/interns. • Allows providers to use a unique identifier instead of a social security number to protect against identity theft. • Added a requirement that documentation of educational degrees and professional certification be kept in the record. • Added that documentation of medication, first aid, CPR, and all other training be kept in the record. This will help determine staff qualifications. • Added studenst/intern records must be kept for 3 years. • Added health records can be maintained separately as required by federal regulation. • Students/interns was added to be consistent with other standards. • "For each position held" was added in element 6 to more easily determine when an individual begins each job that may have different requirements. • "This regulation" was changed to "these standards" in element 9 for consistency.
240	310	Staff development. A. New employees, relief staff, volunteers and students/interns shall within one calendar month of employment be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their positions, and their duties and responsibilities. B. The facility shall develop a staff training plan that addresses the knowledge, skills, and abilities that employees need to perform their job. C. Regular supervision of staff shall not be the only method of staff development D. All personnel shall receive documented training and other staff development activities as necessary to enable them to adequately perform their job responsibilities.	A. Required initial training: 1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures and techniques regarding less restrictive interventions, timeout, and physical restraint. 2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall conduct emergency preparedness and response training which shall include: a. Alerting emergency personnel and sounding alarms; b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, non-ambulatory); c. Using, maintaining, and operating emergency equipment; d. Accessing emergency information for

			residents including medical information; and e. Utilizing community support services. 3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same provider, relief staff, volunteers and students/interns shall be given orientation and training regarding: a. The objectives of the facility; b. Practices of confidentiality; c. The decision making plan; d. The Standards for Interdepartmental Regulation of Children's Residential Facilities including the prohibited actions as outlined in this regulation; and e. Other policies and procedures that are applicable to their positions and their duties and responsibilities. 4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation. 5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect; mandatory reporting; maintaining appropriate professional relationships and interaction among staff and residents; and suicide prevention. 6. Within 30 days following their begin date or as required by other state or federal regulations, all staff shall be trained on the facility's policies and procedures regarding standard precautions. 7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities and good neighbor policies and community relations. 8. Before they can administer medication, all staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications. 9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan. B. Required annual retraining: 1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training which shall include: a. Alerting emergency personnel and sounding alarms; b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, non-ambulatory); c. Using, maintaining, and operating emergency equipment; d. Accessing emergency information for

			residents including medical information; and e. Utilizing community support services. 2. All staff who administer medication shall complete annual refresher medication training. 3. All child care staff shall receive annual retraining on the provider's behavior intervention and timeout policies and procedures. 4. All staff working with residents shall receive annual retraining in child abuse and neglect; mandatory reporting; maintaining appropriate professional relationships and interaction among staff and residents; and suicide prevention. 5. All staff shall receive annual retraining on the provider's policies and procedures regarding standard precautions. C. Each full time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties. D. Providers shall develop and implement written policies and procedures to ensure that part time staff receive training applicable to their positions. E. Training provided shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs. • Added that employees transferring from other facilities operated by the provider be given orientation and training regarding the new facility. • Changed the requirement for new employees, volunteers, students to have orientation and training regarding the facility within 14 days instead of 30 days. • Added that part of this orientation include information about the provider's decision making plan and the Interdepartmental Standards, including the prohibited actions outlined in the standards. • Reorganized all training requirements and brought all requirements to this section. • Added initial and annual training requirements for emergency response. • Required that all staff working with residents be enrolled in CPR and first aid classes within 30 days of hire. • Added a requirement that all staff be trained within 30 days on the provider's policies and procedures regarding standard (formerly called universal) precautions and annually thereafter. • Requires that all staff working

			with residents be trained in child abuse and neglect, mandatory reporting, boundary issues, and suicide prevention within 30 days of hire and annually. • Requires an additional 15 hours of training. • Added a requirement that policies and procedures be developed to require training for part time staff. • Training must be comprehensive and ensure that staff have the competencies to perform their duties. • "Conduct" replaced "implemented" as this is preferred wording. • "Sponsor" was changed to "provider" to be consistent. • "Or as required by other state or federal regulations" was added as these regulations may require that this training be provided sooner. • "Universal" was changed to "standard" as this is the more current term. • "Training in appropriate siting of children's residential facilities" was added as this requirement is in the *Code of Virginia*. • A lettering error was corrected. • Wording was changed for consistency. Increased training was recommended by the December 2006 JLARC study.
250	320	Supervision. Regular supervision of staff, volunteers, and students/interns shall be provided.	The provider shall develop and implement written policies and procedures regarding the supervision of staff, volunteers, contractors and students/interns. These policies and procedures shall include: 1. Type of supervision; 2. Frequency of supervision; and 3. How the supervision will be documented. Requires policies and procedures for supervision of staff, volunteers and students/interns to ensure that the facility has a plan for supervision.
NA	330	NA	The applicant A. Each applicant shall provide documentation that they have been trained on appropriate siting of children's residential facilities and good neighbor policies and community relations. B. The applicant shall be interviewed in person by the regulatory authority to determine the qualifications of the owner or operator as set out in these standards. C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in these standards, to perform the duties of the chief administrative officer.

			• Added requirements for the applicant. The applicant must be trained on the siting of a facility, the applicant must be interviewed in person by the regulatory authority to determine qualifications and the applicant must hire someone with the required qualifications to be chief administrative officer if the applicant is not qualified. This will better ensure that the person making administrative decisions at the facility is qualified. • "And good neighborhood policies and community relations" was added as this training is required for the applicant by the *Code of Virginia.*
260	340	The chief administrative officer A chief administrative officer appointed after July 1, 2000 shall have at least: 1. A baccalaureate degree from an accredited college or university in the field of human services, institutional management, social work, education or other allied discipline; or 2. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession.	A. The chief administrative officer shall have the following responsibilities: 1. Responsibility for compliance with the Standards for Interdepartmental Regulation of Children's Residential Facilities and other applicable standards and statutes; 2. Responsibility for overseeing all personnel; 3. Overseeing facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and 4. Responsibility for the facility's financial integrity. B. A chief administrative officer appointed after the effective date of these standards shall have at least: 1. A master's degree in social work, psychology, counseling, nursing or administration and a combination of two years professional experience working with children and in administration and supervision ; or 2. A baccalaureate degree in social work, psychology, counseling, nursing or administration and three years of combined professional experience with children, and in administrative and supervisory experience; or 3. A baccalaureate degree and a combination of four years professional experience in a children's residential facility and in administration and supervision. 4. For a program whose lead regulatory agency is the Department of Education, a master's in education and a combination of two years of professional experience working with children and in administration and supervision or a baccalaureate degree in education and a combination of three years professional experience with children, and in administration and supervision may be accepted.

			C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer: 1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and 2. Documentation of prior relevant experience. • Added duties of the chief administrative officer, as these duties are critical to the successful operation of the facility and involve decisions that need to be made by qualified staff. • Strengthened education and experience requirements. Offered several options to allow the provider flexibility in finding a qualified person • Added that the chief administrative officer must provide transcripts within 30 days of hire certified by the accredited college or university of attendance and documentation of prior relevant experience to ensure that the chief administrative officer is qualified.
270	350	Program director B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility. C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full-time, qualified staff members. D. A person appointed after July 1, 1981, to direct programs shall have: 1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied discipline; 2. A graduate degree from an accredited college or university in a profession related to child care and development; or 3. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.	B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision. C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full time, qualified staff members. D. A person appointed after the effective date of these standards to direct programs shall have at least: 1. A master's degree in social work, psychology, counseling, or nursing and a combination of two_years experience with children, in a children's residential facility and administration or supervision; 2. A baccalaureate degree in social work, psychology, counseling or nursing and a combination of three years professional experience with children, in a children's residential facility and in administration or supervision; 3. A baccalaureate degree and a combination of four years of professional experience working with children, in a children's residential facility and in administration or supervision; or 4. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or

			alcoholism; 5. For a program whose lead regulatory agency is the Department of Education, a master's degree in education and a combination of two years of professional experience with children, in a children's residential facility and in administration or supervision or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and a combination of three years professional experience working with children, in a children's residential facility and in administration or supervision. E. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director: 1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and 2. Documentation of prior relevant experience. • Changed the title of the section to Program Director. • Added the duties of overseeing assessments, service planning, staff scheduling, and supervision to clarify who should be performing these critical functions. • Strengthened education and experience requirements. Offered several options to allow the provider some flexibility in finding a qualified person. • Added the program director must provide transcripts within 30 days of hire certified by the college or university of attendance and documentation of prior relevant experience to ensure the program director is qualified to work with the residents.
NA (part of former 670)	360	Case manager C. Social services consistent with the goals of the service plan shall be provided to meet the specific needs of each resident, except residents of secure detention facilities who are not confined with a suspended commitment to the Department of Juvenile Justice, in one of the following ways: 1. By or under the direct supervision of a staff member who (i) holds a bachelor's degree in psychology, counseling, social work, or other discipline specifically approved by the regulatory authority and (ii) has completed two years of successful experience in psychology, counseling, social work, or other field specifically approved by the regulatory authority (In lieu of two years experience, the person may work under the direct supervision of a qualified supervisor for a period of two years.)	A. Case managers shall have the responsibility for: 1. Coordination of all services offered to each resident; and 2. Provision of case management services as required in 22 VAC 42-11-760.A. B. Case managers shall have: 1. A master's degree in social work, psychology, or counseling; or 2. A baccalaureate degree in social work or psychology with documented field work experience and must be supervised by the program director or other staff employed by the provider with the same qualifications as required by 22 VAC 42 - 11-350.D; or 3. A baccalaureate degree and three years of professional experience working with children.

			Added to ensure that someone qualified is making the decisions at the facility on a day- to-day basis.
280	370	Child care supervisor D. An individual supervising child care workers shall have: 1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or 2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years experience in the human service field with at least two years in a residential facility for children	A. Child care supervisors shall have responsibility for the: 1. Development of the daily living program within each child care unit; and; 2. Orientation, training and supervision of direct care workers. B. Child care supervisors shall have: 1. A baccalaureate degree in social work or psychology and two years of professional experience working with children, one year of which must have been in a residential facility for children; 2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years professional experience working with children with at least two years in a residential facility for children; or 3. A combination of education and experience working with children as approved by the lead regulatory authority. • Separated the child care supervisor from the rest of the child care staff standard so it would be more visible. • Added duties for the child care supervisor. • Strengthened education and experience requirements. Offered several options to allow the provider flexibility in finding a qualified person.
280	380	Child care staff E. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned including: 1. Overseeing physical care; 2.Development of acceptable habits and attitudes; 3.Management of resident behavior; and 4. Helping to meet the goals and objectives of any required service plan. F. A child care worker shall: 1. Be a high school graduate or have a General Education Development Certificate (G.E.D.); and 2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible. G. An individual hired, promoted, demoted, or transferred to a child care worker's position after July 1, 2000 shall be at least 18 years older.	A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including: 1. Overseeing physical care; 2. Development of acceptable habits and attitudes; 3. Management of resident behavior; and 4. Helping to meet the goals and objectives of any required service plan. B. A child care worker and a relief child care worker shall: 1. Have a baccalaureate degree in human services; 2. Have an associates degree and three months experience working with children; or 3. Be a high school graduate or have a General Education Development Certificate (G.E.D.) and have six months of experience working with children. C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, ~~or~~ case manager, child care supervisor or a child care worker with one or more years professional experience working with children. This section does not apply to

			the juvenile correctional facilities where staff are trained in a comprehensive basic skills curriculum before beginning their child care duties. D. An individual hired, promoted, demoted, or transferred to a child care worker's position after the effective date of these standards shall be at least 21 years old, except as provided in 22 VAC 42-11-270.A. E. The provider shall not be dependent on temporary contract workers to provide resident care. • Increased age of child care workers from 18 to 21. • Added the requirement that the provider could not be dependent on temporary contract workers (added definition) to provide direct care to ensure staff consistency. • Strengthened education and experience requirements. Offered several options to allow the provider flexibility in finding a qualified person.
290	390	Relief Staff Qualified relief staff shall be employed as necessary to maintain required staff/child ratios at all times and to maintain a structured program of care in accordance with 22 VAC 42-10-690.	Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with 22 VAC 42-11-780. Changed wording to say that enough relief staff must be available to maintain the structured program of care. Relief child care staff requirements added in child care section.
300	NA	Medical Staff A. Services of a licensed physician shall be available for treatment of residents as needed. B. Each nurse shall hold a current nursing license issued by the Commonwealth of Virginia. C. At all times that children are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first aid issued by the American Red Cross or other recognized authority for each 16 children or portion thereof on the premises. Each nurse on the premises who holds a current nursing license issued by the Commonwealth of Virginia may be considered to hold a current certificate in first aid. D. At all times that children are present there shall be at least one responsible adult on the premises who has a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority for each 16 children or portion thereof on the premises. (portions moved to new 310 and 830)	This section was deleted as all requirements were moved to other sections or were deleted as they were repetitive.
310	400	Volunteers and student interns A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use. B. The facility shall not be dependent upon	A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use. B. The facility shall not be dependent upon

		use of volunteers or students/interns to provide basic services. C. Responsibilities of volunteers and students/interns shall be clearly defined in writing. D. Volunteers and students/interns shall have qualifications appropriate to the services they render. E. Volunteers and students/interns shall comply with all regulations governing confidential treatment of personal information. F. Volunteers and students/interns shall be informed of liability protection, if any, provided by the facility.	volunteers or students/interns to provide basic services. C. Responsibilities of volunteers and students/interns shall be clearly defined in writing. D. Volunteers and students/interns shall have qualifications appropriate to the services they render. • Deleted the requirements that volunteers comply with confidentiality policies as it is covered in another section of the standards. • Deleted the requirement that volunteers be informed of liability protection as this is good practice but not a regulatory issue.
330	420	Buildings, inspections and building plans A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy indicating that the building is classified for its proposed use. B. The facility shall document at the time of its original application and annually thereafter that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51-10 et. seq.). C. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include: 1. General sanitation; 2. The sewage disposal system; 3. The water supply; 4. Food service operations; and 5. Swimming pools. D. The buildings shall provide adequate space and shall be of a design that is suitable to house the programs and services provided.	A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy. B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities. C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51-10 et. seq.). D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include: 1. General sanitation; 2. The sewage disposal system; 3. The water supply; and 4. Food service operations. E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents. F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the lead regulatory agency and by other appropriate regulatory authorities. G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business. • Added to the requirement that buildings provide adequate space and be of a design suitable to house the programs and services provided, that physical environment also shall provide adequate space and design. Also, adds the

			requirement that buildings and physical environment meet the specialized needs of the residents. This will ensure that the residential environment will be suitable for the population served. • Changed wording as the fire inspector can only provide consultation at the initial visit. • Deleted the requirement that the certificate of occupancy state the proposed use of the building as many localities will not do this. • A change was made to allow swimming pool companies to inspect swimming pools at the suggestion of the Department of Health.
335	430	Heating systems, ventilation and cooling systems A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 65° F is maintained, unless otherwise mandated by state or federal authorities. C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 85° F.	A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 68° F is maintained, unless otherwise mandated by state or federal authorities. C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F. • The lowest temperature of a living area was increased from 65° to 68° F. • The highest temperature of a living area was decreased from 85° to 80° F.
340	440	Lighting B. All areas within buildings shall be lighted for safety. C. Lighting in halls and bathrooms shall be adequate and shall be continuous at night. D. Lighting shall be sufficient for the activities being performed. E. Operable flashlights or battery powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies. F. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.	B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed. C. Lighting in halls shall be adequate and shall be continuous at night. D. Operable flashlights or battery powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies. E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders. Combined 2 standards to require lighting to be sufficient for safety and for activities performed
350	450	Plumbing C. Precautions shall be taken to prevent scalding from running water. D. Mixing faucets shall be installed in all newly constructed buildings and when making structural modifications or additions to existing buildings.	C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100° – 120° F. • A requirement for mixing faucets was deleted as the use of mixing faucets is the accepted practice of builders at this time. The Department of Housing and Community Development advised that this requirement was no longer needed.

			• Added that water temperatures should be maintained at 100°-120° F.
360	460	C. There shall be at least one toilet, one hand basin and one shower or tub for every eight residents. D. There shall be one toilet, one hand basin and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981 except secure detention facilities.	C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981. D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after the effective date of these standards shall comply with the one to four ratio. All facilities licensed after the effective date of these standards will be required to have 1 toilet, 1 hand basin, and 1 shower or tub for every 4 residents.
370	470	Personal necessities A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming. Personal necessities include, but are not necessarily limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment. C. When residents are incontinent or not toilet trained: 1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use. 2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each. 3. Adapter seats and toilet chairs shall be cleaned immediately after each use with warm soapy water; 4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.	A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming. B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often, if needed. C. When residents are incontinent or not toilet trained: 1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use. 2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used there shall be a diaper pail for each. 3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials. 4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting. 5. Appropriate privacy, confidentiality and dignity shall be maintained for residents during toileting and diapering. • Deleted from the standard the listing of personal items as it was thought this information should be included in the interpretive material. • Added a requirement that towels and wash cloths be in good repair. • Changed the requirement to use warm, soapy water to clean toilets and adapter seats, to use appropriate cleaning materials. • Added a requirement that privacy, dignity, and confidentiality be maintained during toileting and diapering of older residents.

380	480	Sleeping areas. A. When residents are four years of age or older, boys and girls shall have separate sleeping areas. B. No more than four children may share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers and boot camps. C. Children who use wheelchairs, crutches, canes or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies. D. Beds shall be at least three feet apart at the head, foot and sides and double-decker beds shall be at least five feet apart at the head, foot and sides. E. Sleeping quarters in facilities licensed by the DSS prior to July 1, 1981 and facilities established, constructed or structurally modified after July 1, 1981, except for primitive campsites, shall have: 1.At least 80 square feet of floor area in a bedroom accommodating one person; 2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and 3. Ceilings at least 7½ feet in height. F. Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blankets, bed linens, and, if needed, a waterproof mattress cover. G. Bed linens shall be changed at least every seven days and more often, if needed. H. Mattresses and pillows shall be clean. I. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer. J. Cribs shall be provided for residents under two years of age. K. Each resident shall be assigned drawer space and closet space, or their equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities. L. The sleeping areas' environment shall be conducive to sleep and rest.	A. When residents are four years of age or older, boys and girls shall have separate sleeping areas. B. No more than four children shall share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers. C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies. D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides. E. Sleeping quarters in facilities licensed by the DSS prior to July 1, 1981, and facilities established, constructed or structurally modified after July 1, 1981, except for primitive campsites, shall have: 1. At least 80 square feet of floor area in a bedroom accommodating one person; 2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and 3. Ceilings with a primary height at least 7½ feet in height exclusive of protrusions, duct work, or dormers. F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover. G. Bed linens shall be changed at least every seven days and more often, if needed. H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code. I. Cribs shall be provided for residents under two years of age. J. Each resident shall be assigned drawer space and closet space, or their equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities. K. The environment of sleeping areas shall be conducive to sleep and rest. • Combined standards by adding the word clean to the standard requiring separate bedding. • Changed standard regarding mattresses to be consistent with Fire Code. • Revised ceiling height requirements.
390	500	Resident's privacy Moved from previous 760 Children shall be provided privacy from routine sight supervision by staff members of the opposite	D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while

		gender while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.	bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record. E. Video and audio monitoring shall be permitted only with the approval of the lead regulatory agency and for facilities licensed by DMHMRSAS, the approval of the Office of Human Rights. • Moved another standard regarding privacy to this section. • Permitted video and audio monitoring only with the permission of the regulatory agency and Human Rights, if applicable.
400	510	Living rooms and indoor recreation space A. Each living unit shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is appropriate to the ages of the residents. B. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space that contains recreation equipment appropriate to the ages and interests of the residents. The indoor recreation space shall be distinct from the living room, but recreation space is not required in every living unit.	A. Each living unit, except for secure custody, shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is appropriate to the ages of the residents. B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents. C. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit. • Clarified that secure custody does not have to have a living room area. • Clarified that all facilities need to have indoor recreation space and materials. • Clarified that facilities with 13 or more residents need to have indoor recreation space separate from the living room.
450	560	Staff Quarters D. When 13 or more residents reside in a living unit a separate, private living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more, except at primitive campsites. E. When child care staff are on duty for less than 24 hours, a bed shall be provided for use by each staff member on duty during night hours unless the staff member is required to stay awake.	• Deleted the requirement that live-in staff have a separate living room. • Deleted the requirement that a bed be provided for overnight staff.
490	600	Housekeeping and maintenance D. All linens shall be kept clean and in good repair.	Deleted the requirement for linens to be clean and in good repair, as this is required in another standard.
500	610	Farm and domestic animals A. Horses and other animals maintained on the premises shall be quartered at a reasonable	A. Horses and other animals maintained on the premises shall be quartered at a

		distance from sleeping, living, eating and food preparation areas. B. Stables and corrals shall be located so as to prevent contamination of water supplies. C. Manure shall be removed from stalls and corrals as often as necessary to prevent fly problems.	reasonable distance from sleeping, living, eating and food preparation areas, as well as a safe distance from water supplies. • Combined the standards for quartering animals a reasonable distance from sleeping, eating, food preparation areas, and from water supplies. • Deleted the requirement for removing manure as this is required in another standard.
510	1080	Campsite A. This section is applicable exclusively to the residential environment and equipment at wilderness camps. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with all other standards in this part. B. Campsites shall be well drained and free from depressions in which water may stand. C. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes. D. Campsites shall not be located in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards. E. Campsites shall be free from debris, noxious plants, and uncontrolled weeds or brush. F. Drinking water used at campsites and during activities away from permanent campsites shall be from a source known to be free of coliform organisms or shall be treated before use in a manner approved by the Virginia Department of Health. G. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for hand washing, dish washing, food preparation and drinking. H. Food shall be obtained from approved sources and shall be properly identified. I. Milk products shall be pasteurized. J. Food and drink shall be maintained and stored using methods that prevent contamination. K. Utensils shall be used to minimize the handling of food. L. Fruits and vegetables shall be properly washed prior to use. M. Food and food containers shall be covered and stored (i) off the ground and (ii) on clean surfaces. Refrigerated food shall be covered. N. Sugar and other condiments shall be packaged or served in closed dispensers. O. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food. P. Persons with wounds or communicable diseases shall be prohibited from handling food. Q. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, keep their hands clean at all times, and thoroughly wash their hands with soap and water after each visit to the toilet. R. Food contact surfaces shall be kept clean. S. All eating utensils and cookware shall be properly stored. T. Disposable and single use dishes, receptacles and utensils shall be properly stored,	Campsite programs or adventure activities A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include: 1. Staff training and experience requirements for each activity; 2. Resident training and experience requirements for each activity; 3. Specific staff-to-resident ratio and supervision plan appropriate for each activity~~;~~, including sleeping arrangements and supervision during night time hours; 4. Plans to evaluate and document each participant's physical health throughout the activity; 5. Preparation and planning needed for each activity and time frames; 6. Arrangement, maintenance, and inspection of activity areas; 7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate; 8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization, and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity; 9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which the resident is engaged; 10. Plans for food and water supplies and management of these resources; 11. Plans for the safekeeping and distribution of medication; 12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity and respect for self-determination; 13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside

		handled and used only once. U. Eating utensils shall not be stored with food or other materials and substances. V. Use of a common drinking cup shall be prohibited. W. Only food which can be maintained in wholesome condition with the available equipment shall be used. X. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled and dispensed in a sanitary manner and shall be free from contamination. Y. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24 hours. Z. Eating utensils and cookware shall be washed after each use. AA. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in a manner that prevents proper cleaning and sanitizing. BB. Solid wastes which are generated shall be disposed of at an approved sanitary landfill or similar disposal facility. Where sanitary landfill facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to flooding. CC. Sanitary-type privies or portable toilets shall be provided where a water supply is not available. Such facilities shall be constructed as required by the Virginia Department of Health. DD. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent fly breeding. EE. Privies shall be located at least 150 feet from streams, lakes, and wells and at least 75 feet from sleeping and housing facilities. FF. Campsites which do not have approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons. GG. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions. HH. Bedding shall be clean, dry, sanitary, and in good repair. II. Bedding shall be adequate to ensure protection and comfort in cold weather. JJ. Sleeping bags, if used, shall be fiberfill and rated for 0° F. KK. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week. LL. Bed wetters shall have their bedding changed or dried as often as it is wet. MM. Mattresses, if used, shall be clean. NN. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer. OO. A mattress cover shall be provided for each mattress. PP. Sleeping areas shall be protected by screening or other means to prevent admittance of	emergency services; and 14. Review of trip plans by the trip coordinator. B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips. 1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents. 2. Documentation regarding this knowledge and experience shall be found in the individual's staff record. 3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip. 4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip. C. The trip coordinator shall conduct a post trip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole. D. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed. E. A trip folder will be developed for each wilderness/adventure activity conducted away from the facility and shall include: 1. Medical release forms including pertinent medical information on the trip participants; 2. Phone numbers for administrative staff and emergency personnel; 3. Daily trip logs; 4. Incident reports; 5. Swimming proficiency list if trip is near water; 6. Daily logs; 7. Maps of area covered by the trip; and 8. Daily plans. F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include: 1. A statement notifying the doctor of the types of activities the resident will be participating in; and 2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities. G. First aid kits used by wilderness campsite programs and providers that take

		flies and mosquitoes. QQ. A separate bed, bunk or cot shall be made available for each person. RR. Each resident shall be provided with an adequate supply of clean clothing which is suitable for outdoor living and is appropriate to the geographic location and season. SS. Sturdy, water-resistant, outdoor footwear shall be provided for each resident. TT. Each resident shall have adequate personal storage area. UU. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires or other source of combustion. VV. Artificial lighting shall be provided in a safe manner. WW. All areas of the campsite shall be lighted for safety when occupied by residents. XX. Staff of the same sex may share a sleeping area with the residents. YY. A telephone or other means of communication is required at each area where residents sleep or participate in programs.	residents on adventure activities shall be activity appropriate and shall be accessible at all times. H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course. I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and non-swimmer. This shall be documented in the resident's record and in the trip folder. J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include: 1. A whistle or other audible signal device; and 2. A lifesaving throwing device. K. A separate bed, bunk or cot shall be made available for each person. L. A mattress cover shall be provided for each mattress. M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes. N. Bedding shall be clean, dry, sanitary, and in good repair. O. Bedding shall be adequate to ensure protection and comfort in cold weather. P. Sleeping bags, if used, shall be fiberfill and rated for 0° F. Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week. R. Each resident shall be provided with an adequate supply of clean clothing which is suitable for outdoor living and is appropriate to the geographic location and season. S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident. T. Each resident shall have adequate personal storage area. U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion. V. Artificial lighting shall be provided in a safe manner. W. All areas of the campsite shall be lighted for safety when occupied by residents. X. Staff of the same sex may share a sleeping area with the residents. Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

			• Moved this section to Special Programs • All standards that duplicated the Department of Health's summer camp regulation were deleted, as Department of Health standards should be applied to these facilities. • Added standards to ensure safety of residents while involved in wilderness/adventure activities.
530	630	Admission procedures. A. The facility shall have written criteria for admission which shall include: 1. A description of the population to be served; 2. A description of the types of services offered; and 3. Intake and admission procedures. B. The facility's criteria for admission shall be accessible to prospective residents, legal guardians, and placing agencies. C. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction. D. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.	A. The facility shall have written criteria for admission which shall include: 1. A description of the population to be served; 2. A description of the types of services offered; 3. Intake and admission procedures; 4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and 5. Description of how educational services will be provided to the population being served. B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction. C. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission. D. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission. • Added exclusion criteria and a description of how educational services will be provided to the population served to the admission criteria requirements to better determine that the facility is serving a population they can manage. • Added a requirement that each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services or any other services needed to serve the resident. This requirement better ensures

			that staff are qualified to work with the residents and is a requirement of the *Code of Virginia.* • Deleted the requirement that admission criteria be available to prospective residents, guardians, and placing agencies.
540	640	Maintenance of resident's records A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident should be maintained as part of the case record. B. Each case record shall be kept up to date and in a uniform manner. C. The facility shall make information available only to persons/organizations legally authorized to have access to the information under federal and state laws. D. The facility shall have and implement written policies and procedures to protect the confidentiality of records. The policy shall address acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the resident. E. Records shall be kept in areas which are accessible to authorized staff and protected from unauthorized access, fire, and flood. 1. When not in use written records shall be stored in a metal file cabinet or other metal compartment. 2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present. F. All portions of each resident's written records shall be consolidated prior to the resident's discharge. G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements. I. The facility shall have a written policy to provide for: 1. The preservation of records in the event the facility ceases operation; 2. Notifying the regulatory authority of the preservation plan; and 3. Retention of and access to automated records. J. Facilities using automated records shall develop and implement procedures for backing up records.	A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident shall be maintained as part of the case record. A separate health record may be kept on each resident. B. Each case record and health record shall be kept up to date and in a uniform manner. C. The provider shall develop and implement written policies and procedures for management of all records, written and automated, that shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including: 1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws; 2. Facilities using automated records shall address procedures which include: a. How records are protected from unauthorized access; b. How records are protected from unauthorized Internet access; c. How records are protected from loss; d. How records are protected from unauthorized alteration; and e. How records are backed up; 3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites; 4. Designation of person responsible for records management; and 5. Disposition of records in the event the facility ceases to operate. D. The policy shall specify what information is available to the resident. E. Active and closed records shall be kept in areas which are accessible to authorized staff and protected from unauthorized access, fire, and flood. 1. When not in use written records shall be stored in a metal file cabinet or other metal compartment. 2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present. F. Each resident's written case and health records shall be stored separately subsequent to the resident's discharge

			according to applicable statutes and regulations. G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements. H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements. • Added requirement for policies and procedures for management and protection of records, both written and automated records. • Added that a separate health record may be kept for residents. (HIPAA) • Changed requirement to consolidate a resident's record to allowing the case and health record to be kept separate.
550	650	Interstate compact A. Documentation of the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the interstate compact has determined the facility is statutorily exempt from the compact's provisions. B. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Interstate Compact on the Placement of Children was notified of the discharge.	A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia interstate compact has determined the facility is statutorily exempt from the compact's provisions. B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record. C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer. D. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge. E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children. • Added a requirement that

			documentation that the provider send all serious incident reports to the administrator of the Virginia Interstate Compact on the Placement of Children and that it be kept in the resident's record. • Added a requirement that within 5 days, documentation of the notification that a resident has been transferred to another facility sponsored by the same agency must be in the record. • Clarified that the administrator of the Virginia Interstate Compact be notified in writing within 10 days that the resident has been discharged. • Added that the provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children. All additions are current requirements of the Interstate Compact.
560	660	Human research. The facility shall: 2. Document approval, as required by the appropriate regulatory authorities, for each research project using residents as subjects of human research.	2. Document approval, as required by the regulatory authorities, for each research project using residents as subjects of human research, unless such research is exempt from review. Standard remained the same except "except such research is exempt from review." Was added to element 2 as this is a change in the *Code of Virginia*.
570	670	Emergency and self-admission Facilities accepting emergency or self-admissions shall: 1. Have and implement written policies and procedures governing such admissions which shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction; 2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care;	Providers accepting emergency or self-admissions shall: 1. Develop and implement written policies and procedures governing such admissions which shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction; 2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and justification of why the resident is to be admitted on an emergency basis; and 3. Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission. • Deleted item 3, as this requirement is a repeat of the first requirement and was an error. • Adds a requirement to justify

			why a child was admitted on an emergency basis to ensure that admissions are assessed appropriately. • Added a requirement for documentation that an emergency admission meets the facility's admission criteria to ensure that the facility is only accepting residents they can manage.
580	680	Application for admission A. Admission, other than an emergency or diagnostic admission, shall be based on evaluation of an application for admission. The requirements of this section do not apply to (i) temporary care facilities, (ii) court ordered placements, or (iii) transfer of a resident between residential facilities located in Virginia and operated by the same sponsor. B. Facilities accepting routine admissions shall develop, and fully complete prior to acceptance for care, an application for admission which is designed to compile information necessary to determine: 1. The physical needs of the prospective resident; 2. The educational needs of the prospective resident; 3. The mental health, emotional and psychological needs of the prospective resident; 4. The physical health needs of the prospective resident; 5. The protection needs of the prospective resident; 6. The suitability of the prospective resident's admission; 7. Whether the prospective resident's admission would pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff; and 8. Information necessary to develop a service plan. C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.	A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor. B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission which is designed to compile information necessary to determine: 1. The educational needs of the prospective resident; 2. The mental health, emotional, and psychological needs of the prospective resident; 3. The physical health needs, including the immunization needs, of the prospective resident; 4. The protection needs of the prospective resident; 5. The suitability of the prospective resident's admission; 6. The behavior support needs of the prospective resident; and 7. Information necessary to develop a service plan and a behavior support plan. C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission. D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that: 1. The needs of the prospective resident can be addressed by the facility's services; 2. The facility's staff are trained to meet the prospective resident's needs; and 3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff. • Changed the admissions requirement to require that all admissions be based on an application, except for court ordered placements and transfers between facilities operated by the same sponsor. • Added a requirement that facilities accepting emergency or diagnostic admissions develop

			an admission application to be completed at the time of placement or prior to placement. • Added to the requirement that facilities gather health information during the admission process that immunization requirements also be obtained to better ensure that health needs are met for each resident. • Added requirement to compile information on behavior support needs of the resident to ensure that the applicant is suitable for the program. • Added a requirement that each facility develop and implement policies and procedures to assess each application for admission to ensure that each resident is suitable for the program.
590	NA	Preplacement activities documentation At the time of each routine admission, the facility shall document: 1. A preplacement visit by the resident accompanied by a family member, agency representative or other responsible adult; 2. Preparation through sharing information with the family or placing agency and with the resident about the facility, the staff, the population served, activities and criteria for admission; and 3. Written confirmation of the admission decision to the legal guardian and to the placing agency.	*The requirements regarding preplacement visits were deleted, as preplacement visits are often conducted at the time of placement.
600	690	Written placement agreement A. The facility, except a facility which accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement which: 1. Authorizes the resident's placement; 2.Addresses acquisition of and consent for any medical treatment needed by the resident; 3. Addresses the rights and responsibilities of each party involved; 4. Addresses financial responsibility for the placement; 5. Addresses resident absences from the facility; and 6. Addresses visitation with the resident.	A. The facility, except a facility which accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement which: 1. Authorizes the resident's placement; 2. Addresses acquisition of and consent for any medical treatment needed by the resident; 3. Addresses the rights and responsibilities of each party involved; 4. Addresses financial responsibility for the placement; 5. Addresses visitation with the resident; and 6. Addresses the education plan for the resident and the responsibilities of all parties. B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency, except as permitted for temporary emergency shelters pursuant to § 63.2-1817 of the *Code of Virginia*. C. The record of each person admitted based on a court order shall contain a copy of the court order. • Clarified that the placement agreement be signed by a facility representative and

			corrected the *Code* cite. • Added a requirement that the educational plan for the resident and the responsibilities of all parties regarding the educational plan be included in the placement agreement. This addition is added to insure that educational planning begins with the application and to insure that the resident begins school in a timely manner. • Deleted requirement addressing absences of the resident.
610	700	Face sheet A. At the time of admission, each resident's record shall include a completed face sheet which contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, and emergency contacts. B. Missing information shall be obtained promptly and information shall be updated when changes occur.	A. At the time of admission, each resident's record shall include a completed face sheet which contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts and parents, if appropriate. B. Information shall be updated when changes occur. C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident. D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location. E. At the time of discharge the following information shall be added to the face sheet: 1. Date of discharge; 2. Reason for discharge; 3. Names and addresses of persons to whom the resident was discharged; and 4. Forwarding address of the resident, if known. • Allows for a unique identifier instead of a social security number. • Clarified that information on the face sheet is to be updated when changes occur. • Added a requirement that placement changes among facilities with the same sponsor be documented on the face sheet for easier location of the child.
620	710	Initial objectives and strategies Within three days following admission, individualized objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities, except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice.	Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities.

			• Clarified that the initial strategies and objectives are to be measurable. • Gave an exception to all resident in secure detention facilities.
630	720	Service plan B. Individualized service plans shall describe the: 1. Strengths and needs of the resident; 2. Resident's current level of functioning; 3. Goals, objectives and strategies established for the resident; 4. Projected family involvement; 5. Projected date for accomplishing each objective; and 6. Status of discharge planning except that this requirement shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction. C. Each plan shall be updated quarterly, or more frequently if necessary, and shall report the: 1. Resident's progress toward meeting the plan's objectives; 2. Family's involvement; 3. Continuing needs of the resident; 4. Resident's progress towards discharge; 5. Status of discharge planning; and 6. Revisions, if any, to the plan. D. Each plan and update shall include the date it was developed and the signature of the person who developed it. E. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan. F. The following parties shall participate, unless clearly inappropriate, in developing the individualized service plan and in updating the plan quarterly, or more frequently, if necessary: 1. The resident; 2. The resident's family, legal guardian, or legally authorized representative; 3. The placing agency; and 4. Facility staff. G. The initial individualized service plan, each update, and all other revisions shall be distributed to the parties who participated in development of the plan. Documentation of distribution shall be included in the resident's record. H. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice.	A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter. B. Individualized service plans shall describe in measurable terms the: 1. Strengths and needs of the resident; 2. Resident's current level of functioning; 3. Goals, objectives and strategies established for the resident; 4. Projected family involvement; 5. Projected date for accomplishing each objective; and 6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction. C. The initial service plan shall be reviewed within 60 days of the initial plan and within each 90 day period thereafter and revised as necessary. D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the service plan which shall include the: 1. Format; 2. Frequency; and 3. Person responsible. E. There shall be a documented quarterly review of each resident's progress 60 days following the initial service plan and within each 90 day period thereafter and shall report the: 1. Resident's progress toward meeting the plan's objectives; 2. Family's involvement; 3. Continuing needs of the resident; 4. Resident's progress towards discharge; and 5. Status of discharge planning. F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it. G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan. H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report: 1. The resident; 2. The resident's family, if appropriate, and legal guardian; 3. The placing agency; and

			4. Facility staff. I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff if allowed by federal guidelines and using all procedures as required by federal guidelines. J. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in post-dispositional detention. • Combined the service plan and quarterly report sections. • Added that the service plan is to be written in measurable terms. • Clarified that the discharge plan was a projected plan with an estimated length of stay. • Time frames for reviewing the service plan were clarified. • Added a requirement that the provider develop policies and procedures for a system to document progress of the resident towards obtaining goals and objectives of the service plan which shall include the format; the frequency; and the person responsible. • Time frames for writing the quarterly progress report were clarified. • Clarified that each service plan and revision and each quarterly progress report be signed and dated. • The requirement that requires participation in the service plan reviews and in the development of the quarterly progress report was clarified to require documentation in the resident's record of the participation. • Distribution of the service plan and quarterly progress reports is required, if allowed by federal regulations.
640	730	Resident transfer between residential facilities located in VA and operated by the same sponsor A. Except when transfer is ordered by a court of competent jurisdiction, the receiving facility shall document at the time of transfer: 1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission; 2. Written confirmation of the admission decision to the legal guardian and to the placing agency; 3. Receipt from the sending facility of a written summary of the resident's progress while at the facility and the resident's current strengths and needs; and 4. Receipt of the resident's record. B. The sending facility shall retain a copy of	A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer: 1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission; 2. Notification to the family, if appropriate; the resident, the placement agency and the legal guardian; 3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current

		the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer.	strengths and needs; and 4. Receipt of the resident's record. B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred. • The requirement to document a written admission decision was deleted. Changes were made to notifications. • A requirement was added that the justification of the transfer be documented in the record. • A requirement was added that the sending agency document on the face sheet the name of the facility the resident was transferred to.
650	740	Discharge F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be made available to or provided to the legal guardian or legally authorized representative.	F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate. The requirement to make available or to provide information to the legal guardian or legally authorized representative was revised to require that the information be provided, if appropriate.
670	760	Social services A. The program of the facility, except a secure detention facility in which juveniles are not confined with a suspended commitment to the Department of Juvenile Justice, shall be designed to provide social services which address: 1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living; 2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care; 3. Utilizing appropriate community resources to provide services and maintain contacts with such resources; 4. Helping the resident strengthen his capacity to function productively in interpersonal relationships; 5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and 6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care. B. The provision of social services shall be documented in each resident's record. C. Social services consistent with the goals of the	Case Management Services. A. The program of the facility shall be designed to provide case management services. In secure detention this requirement applies only to residents confined in post-dispositional detention. Case managements services shall address: 1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living; 2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care; 3. Utilizing appropriate community resources to provide services and maintain contacts with such resources; 4. Helping the resident strengthen his capacity to function productively in interpersonal relationships; 5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and 6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for

		service plan shall be provided to meet the specific needs of each resident, except residents of secure detention facilities who are not confined with a suspended commitment to the Department of Juvenile Justice, in one of the following ways: 1. By or under the direct supervision of a staff member who (i) holds a bachelor's degree in psychology, counseling, social work, or other discipline specifically approved by the regulatory authority and (ii) has completed two years of successful experience in psychology, counseling, social work, or other field specifically approved by the regulatory authority (In lieu of two years experience, the person may work under the direct supervision of a qualified supervisor for a period of two years.); 2. By service staff of the agency that placed the resident provided such staff is available on an as needed basis rather than on a limited basis (e.g. quarterly or semi-annually); 3. On a contract basis by a professional licensed to practice in the Commonwealth of Virginia, other state or the District of Columbia; or 4.On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community-based group.	independent living, or for other residential care. B. The provision of case management services shall be documented in each resident's record. • "Social services" was changed to "case management services" for clarity. • The qualifications section to provide case management services was deleted here and added to a new section called case worker. • Wording was clarified regarding secure detention.
690	780	Structured program of care C. A daily activity log shall be maintained to inform staff of significant happenings or problems experienced by residents. E. The identity of the individual making each entry in the daily activity log shall be recorded.	C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents. E. The identity of the individual making each entry in the daily communication log shall be recorded. • The activity log was renamed communication log. • Added a requirement that the daily routine complies with any facility or locally imposed curfews.
700	790	Health care procedures A. The facility shall have and implement written procedures for promptly: 1. Providing or arranging for the provision of medical and dental services for health problems identified at admission; 2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission; 3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian; and 4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems. B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency: 1. Name, address, and telephone number of the physician and dentist to be notified; 2. Name, address, and telephone number of a relative or other person to be notified;	A. The provider shall have and implement written procedures for promptly: 1. Providing or arranging for the provision of medical and dental services for health problems identified at admission; 2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission; 3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian; 4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and 5. Ensuring that the required information in 22 VAC 42-11-790. B is accessible and up-to-date. B. The following written information concerning each resident shall be readily accessible to staff who may have to

		3. Medical insurance company name and policy number or Medicaid number; 4. Information concerning: a. Use of medication; b. Medication allergies; c. Substance abuse; and d. Significant past or present medical problems; 5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent; and 6. Subsections 3 and 5 do not apply to secure detention facilities except when a resident is confined in detention with a suspended commitment to the Department of Juvenile Justice.	respond to a medical or dental emergency: 1. Name, address, and telephone number of the physician and dentist to be notified; 2. Name, address, and telephone number of a relative or other person to be notified; 3. Medical insurance company name and policy number or Medicaid number; 4. Information concerning; a. Use of medication; b. All allergies, including medication allergies; c. Substance abuse and use; and d. Significant past and present medical problems. 5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent; and 6. Subsections 3 and 5 do not apply to secure detention facilities except when a resident is confined in post-dispositional detention. C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility. • A new requirement was added for a policy and procedure to assure that information required in 790.B (emergency information) was promptly available. • Clarifications were made to the emergency information section to require information about all allergies including medication allergies, information about substance abuse and use, and past and present medical problems.
710	800	Medical examination and treatment B. Each resident's record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by a licensed physician including any recommendation for follow up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident. C. Each physical examination report shall include: 1. Information necessary to determine the health and immunization needs of the resident, including: a. Immunizations administered; b. Vision exam; c. Hearing exam; d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis; e. Allergies, chronic conditions, and handicaps, if any; f. Nutritional requirements, including special diets, if any; g. Restrictions on physical activities, if any;	B. Within seven days of placement, except for secure detention, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. Secure detention shall have completed the screening assessment on each resident within five days of placement. C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the screening form published by the Virginia Department of Health. D. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the

		and h. Recommendations for further treatment, immunizations, and other examinations indicated; 2. Date of the physical examination; and 3. Signature of a licensed physician, the physician's designee, or an official of a local health department. D. A child with a communicable disease shall not be admitted unless a licensed physician certifies that: 1. The facility is capable of providing care to the child without jeopardizing residents and staff; and 2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff. The requirements of this subsection shall not apply to temporary shelters and secure detention facilities. E. Each resident's record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to secure detention facilities, temporary care facilities, and respite care facilities. F. Each resident's record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given. G. Each resident's record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable. This subsection does not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice. H. Written policies and procedures, which include use of universal precautions, shall be developed and implemented to address communicable and contagious medical conditions.	direction of a licensed physician including any recommendation for follow up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident. E. Each physical examination report shall include: 1. Information necessary to determine the health and immunization needs of the resident, including: a. Immunizations administered at the time of the exam; b. Vision exam; c. Hearing exam; d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis; e. Allergies, chronic conditions, and handicaps, if any; f. Nutritional requirements, including special diets, if any; g. Restrictions on physical activities, if any; and h. Recommendations for further treatment, immunizations, and other examinations indicated; 2. Date of the physical examination; and 3. Signature of a licensed physician, the physician's designee, or an official of a local health department. F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that: 1.The facility is capable of providing care to the child without jeopardizing residents and staff; and 2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff. The requirements of this subsection shall not apply to temporary shelters and secure detention facilities. G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to secure detention facilities, temporary care facilities, and respite care facilities. H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given. I. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable. This subsection does not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice. J. The provider shall develop and

			implement written policies and procedures, which include use of standard precautions and addresses communicable and contagious medical conditions. These policies and procedures shall be approved by a medical professional. K. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies. • Clarified that record means health record. • Within seven days of placement, except for secure detention, each resident have a screening assessment as evidenced by the completion of a form containing the elements of a current tuberculosis risk assessment screening form published by the Department of Health. The screening assessment can be no older than 30 days. Secure detention has 5 days to complete the screening assessment as required in DJJ standards. (Recommended by the Department of Health). Seven days coincides with the physical evaluation requirement. • A screening assessment must be completed annually on each resident. (Recommended by the Department of Health) • It was clarified that the annual exam could be performed by a physician or under the direction of a physician. • Clarified that the physical exam report includes immunizations administered at the time of the exam. • The policies and procedures regarding standard (formerly called universal) precautions must now be approved by a medical professional.
720	810	Medication C. Medication shall be administered only by staff authorized to do so by the director. E. A program of medication shall be initiated for a resident only when prescribed in writing by a licensed physician. F. Medication prescribed by a licensed physician shall be administered as prescribed. G. A daily log shall be maintained of all medicines received by each resident and shall identify the individual who administered the medication. I. The telephone number of a regional poison control center shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs. J. At least one unexpired 30 cc bottle of Syrup of Ipecac and one unexpired container of	B. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication. C. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects. D. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication. E. Medication prescribed by a person authorized by law shall be administered as

		activated charcoal shall be available on the premises of the facility for use at the direction of the poison control center or physician and shall be kept locked when not in use.	prescribed. F. A medication administration record shall be maintained of all medicines received by each resident and shall include: 1. Date the medication was prescribed; 2. Drug name; 3. Schedule for administration; 4. Strength; 5. Route; 6. Identity of the individual who administered the medication; and 7. Dates the medication was discontinued or changed. G. In the event of a medication error or an adverse drug reaction, first aid shall be administered, if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. H. Medication refusals shall be documented including action taken by staff. I. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval. J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs. K. Syringes and other medical implements used for injecting or cutting skin shall be locked. To reduce medication errors: • A requirement was deleted that the director authorize staff to administer medication as staff will be authorized once they have been trained. • A clarification was made that over-the-counter drugs also be prescribed by a person authorized by law to prescribe medication. • “Licensed physician” was changed to “person authorized by law to prescribe medication” when talking about prescribing medication. • Components of the daily

			medication administration log were specified. • A requirement was added to require documentation of medication refusals. The requirement to notify the prescribing professional was deleted as providers as these individuals are not available. Issue will be handled in technical assistance. • A requirement was added that the provider develop policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy must be approved by a health care professional. The provider shall keep documentation of this approval. • "Other emergency numbers" was added to the requirement to post the poison control number by or on the phone. • The requirement to have an unexpired bottle of Syrup of Ipecac and activated charcoal were deleted at the advice of health professionals.
730	820	Nutrition B. Menus shall be kept on file for at least six months.	Revised to require menus of actual meals be kept.
740	830	Staff supervision of children A. No member of the child care staff shall be on duty more than six consecutive days without a rest day except in an emergency. E. Supervision Policies 1. The facility shall develop and implement written policies and procedures which address staff supervision of children. 2. Written policies and procedures governing supervision of children shall be reviewed and approved by the regulatory authority prior to implementation. 3. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement. F. During the hours that children are scheduled to be awake there shall be at least one child care staff member awake, on duty and responsible for supervision of every 10 children, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities except: 1. Independent living programs shall have at least one child care staff member awake, on duty and responsible for supervision of every 15 children on the premises or participating in off campus, facility sponsored activities; 2. For children under four years of age, there shall be at least one child care staff member awake, on duty and responsible for supervision of every three children who are on the premises or	A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the lead regulatory agency for live-in staff. B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays. C. Child care staff other than live in staff shall not be on duty more than 16 consecutive hours, except in an emergency. D. There shall be at least one trained child care worker, on duty and actively supervising residents at all times that one or more residents are present. E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority. F. Supervision Policies. 1. The provider shall develop and implement written policies and procedures which address staff supervision of children including

		participating in off-campus, facility-sponsored activities except that this requirement does not apply to severely multi-handicapped, nonambulatory children; 3. For severely multi-handicapped, nonambulatory children, there shall be at least one child care staff member awake, on duty and responsible for supervision of every six children; 4. Programs that accept mothers and their children shall have at least one child care staff member awake, on duty and responsible for supervision of every six children (counting both mothers and their children); and 5. Except when exempted by the regulatory authorities, programs that are licensed or certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide treatment services for children with diagnosed mental illness or diagnosed severe emotional or behavioral problems where close supervision is indicated shall have at least one child care staff member awake, on duty and responsible for supervision of every eight children. G. During the hours that residents are scheduled to sleep there shall be no less than one child care staff member on duty and responsible for supervision of every 16 children, or portion thereof, on the premises, except for programs that accept mothers and their children, there shall be at least one child care staff member in the building, on duty and responsible for every 10 residents. H. There shall be at least one child care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. When there are 16 or more residents in a building, the staff person shall remain awake, and the ratio of one staff person to every 16 residents or portion thereof shall be maintained. For less than 16 residents in the building, the staff person may sleep but shall be on duty and responsible for supervision. This requirement does not apply to approved independent living programs. I. On each floor where children are sleeping, there shall be at least one child care staff member awake and on duty for every 30 children or portion thereof.	contingency plans for resident illnesses, emergencies, off campus activities, and resident preferences. These policies and procedures shall be based on the: a. Needs of the population served; b. Types of services offered; c. Qualifications of staff on duty; and d. Number of residents served. 2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake except when the lead regulatory agency has approved or required a supervision plan with a different ratio based on the needs of the population served. 3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the lead regulatory agency which shall include: a. Why resident care will not be adversely affected and b. How residents' needs will be met, on an individual as well as group basis. 4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be supervised by one staff than was approved or required, shall be reviewed and approved by the regulatory authority prior to implementation. 5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement. 6. The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice. • "Children" was changed to "resident." • Amended the requirements for supervision policies to include contingency plans for resident illnesses, emergencies, off campus activities, and resident preferences. This requirement will better ensure that residents are appropriately supervised in all situations. • The facility must write policies and procedures based on the needs of the population served, types of services offered, qualifications of staff on duty, and number of residents. • Ratio of staff to residents during awake hours shall be 1:8 unless the lead agency has approved or required a different ratio. • A procedure is included for providers to request a different ratio. • The requirements for specific staff to resident ratios in special

			programs were deleted as the requirement to write policies and procedures was added. • DJJ will establish their own ratios. • The requirement that supervision policies or a summary of the policies be provided, upon request, to the placing agency or legal guardian prior to placement was deleted as it was not a regulatory issue. • A provision for live-in staff was added.
750	840	Emergency telephone numbers A. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with a telephone number where a responsible facility staff member or other responsible adult may be reached at all times. This subsection does not apply to residents of secure detention facilities. B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.	A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day. B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number. • Requirements that providers must have an emergency number where a staff person can be reached 24 hours a day were clarified. • When a resident is off campus they are to be given an emergency number. Any adults who are responsible for the resident while he is off campus is also to be given the emergency number.
770	850	Searches C. A facility that conducts pat downs shall develop and implement written policies and procedures governing them which shall provide that: 1. Pat downs shall be limited to instances where they are necessary to prohibit contraband; 2. Pat downs shall be conducted only in accordance with the written policies and procedures; 3. Pat downs shall be conducted by personnel of the same gender as the client being searched; 4. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and 5. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.	A requirement to conduct pat downs in accordance with policies and procedures was deleted as all policies and procedures should be followed.
780	860	Management of resident behavior (moved behavior management requirements to 900 behavioral interventions)	A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include:

			1. Identification of positive and problem behavior; 2. Identification of triggers for behaviors; 3. Identification of successful intervention strategies for problem behavior; 4. Techniques for managing anger and anxiety; and 5. Identification of interventions that may escalate inappropriate behaviors. B. Individualized behavior support plans shall be developed in consultation with the: 1. Resident; 2. Legal guardian; 3. Resident's parents, if applicable; 4. Program director; 5. Placing agency staff; and 6. Other applicable individuals. C. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan. D. This section shall not apply to secure detention and the Reception and Diagnostic Center • Changed this section title to Behavior Support as this is current child welfare philosophy. • Requires a behavior support plan within 30 days of admission developed with the resident, the resident's legal guardian, placing agency staff, facility staff, and other key players. • Requires that staff be knowledgeable of behavior support plan before working alone with resident.
790	870	Confinement A. The facility shall have and implement written policies and procedures governing the conditions under which a resident may be confined and the maximum period of confinement. The conditions and maximum period of confinement shall be based on the resident's chronological and developmental level. B. The room in which a resident is confined shall not be locked nor the door secured in a manner that prevents the resident from opening it, except that this subsection does not apply to secure custody facilities. C. A confined resident shall be able to communicate with staff. D. Staff shall check on the resident in the	Timeout. A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level. B. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it, except that this subsection does not apply to secure custody facilities. C. A resident in timeout shall be able to

		room at least every 30 minutes and more often depending on the nature of the resident's disability, condition and behavior. E. Use of confinement and staff checks on the residents shall be documented when confinement is used for managing resident behavior.	communicate with staff. D. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior. E. Use of timeout and staff checks on the residents shall be documented. F. This section does not apply to secure custody facilities. • "Confinement" was changed to "timeout" in accordance with the Human Rights Regulation. • For safety issues, a resident placed in timeout shall be checked every 15 minutes instead of every 30 minutes.
800	880	Prohibitions 14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department for Rights of Virginians With Disabilities.	14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Office for Protection and Advocacy. The name of the Department for Rights of Virginians with Disabilities was changed to the Virginia Office of Protection and Advocacy.
810	890	Chemical or mechanical restraints B. Use of chemical restraints is prohibited.	Pharmacological and mechanical retraints B. Use of pharmacological restraints is prohibited. "Chemical restraint" was changed to "pharmacological restraint" to comply with the Human Rights Regulation.
820	900	Physical restraint A. The facility shall have and implement written policies and procedures governing use of physical restraint. B. The facility's procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior. C. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others. D. Trained staff members may physically restrain a resident only after less intrusive interventions have failed or when failure to restrain would result in harm to the resident or others. E. Each application of physical restraint shall be fully documented in the resident's record including: 1. Date; 2. Time; 3. Staff involved; 4. Circumstances; 5. Reasons for using physical restraint; 6. Duration; 7. Method or methods of physical restraint used; and 8. Less intrusive interventions which were unsuccessfully attempted prior to using physical restraint. F. Each staff member responsible for supervision of children shall receive basic	Behavioral Interventions. A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall: 1. Define and list techniques that are used and available for use in the order of their relative degree of restrictiveness; 2. Specify the staff members who may authorize the use of each technique; and 3. Specify the processes for implementing such policies and procedures B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court ordered and emergency admissions, this information shall be provided to: 1. Residents within 12 hours following admission; 2. Placing agencies within 72 hours following the resident's admission; and 3. Legal guardians within 72 hours following the resident's admission, except that this requirement does not apply:

		orientation to the facility's physical restraint procedures and techniques and to less intrusive interventions within seven days following employment. 1. Physical restraint shall be applied only by staff who have been trained in the facility's physical restraint procedures and techniques. 2. Staff shall review the facility's training in physical restraint and less intrusive interventions at least annually.	a. To secure detention facilities except when a juvenile is confined in post-dispositional detention; b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and c. When a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia. C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to: 1. Residents prior to implementation and 2. Legal guardians and placing agencies prior to implementation except that this requirement does not apply: a. To secure detention facilities; b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and c. When a state mental hospital is evaluating a child's treatment needs as provided by the Code of Virginia. D. The provider shall develop and implement written policies and procedures governing use of physical restraint which shall include: 1. The staff position who will write the report and timeframe; 2. The staff position who will review the report and timeframe; and 3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior. E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement. F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others. G. Trained staff members may physically restrain a resident only after less restrictive interventions have failed or when failure to restrain would result in harm to the resident or others. H. Only trained staff members may manage resident behavior. I. Each application of physical restraint shall be fully documented in the resident's record including: 1. Date; 2. Time; 3. Staff involved; 4. Justification for the restraint; 5. Less restrictive interventions which were unsuccessfully attempted prior to using physical restraint;

			6. Duration; 7. Description of method or methods of physical restraint techniques used; 8. Signature of the person completing the report and date; and 9. Reviewer's signature and date. J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques. K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served. L. Anytime children are present staff must be present who have completed all trainings in behavior intervention. • Section was changed to Behavior Interventions. • Requirements from former behavior management section (780) were moved to this section. Because the goal is for residents to manage their own behavior, behavior support is emphasized. Less focus should be put on behavior management and physical restraint. • Components of the policies and procedures for behavior intervention and management of resident behavior were specified to include the definition and list of techniques that are used and are available for use in the order of their relative degree of restrictiveness; the staff members who may authorize the use of each technique; and the processes for implementing such policies and procedures. • The exception for giving copies of the policies regarding behavior management and all revisions to those residents with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information was deleted. • "Referral agency" was changed to "placing agency." • The requirement to develop and implement policies and procedures governing the use of physical restraint was clarified to include the identification of the staff person who will write the report and timeframe; the staff person who will review the report and timeframe; and methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove

			unsuccessful in calming and moderating the resident's behavior. • A requirement was added that all incidents of physical restraint shall be reviewed and evaluated to plan for continued staff development for performance improvement. • The word intrusive was changed to less restrictive. • In the documentation of all incidents of physical restraint the components, circumstances and reasons for restraint, were replaced with justification for the restraint. The signature of the person completing the report and the date and a reviewer's signature and date was added to the documentation requirements. • Training in the provider's behavior management policies was added to the staff development section. • A requirement that providers ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques if applicable, by an individual experienced in training staff in the management of behavior for the population served replaced the requirement that physical restraint be applied only by staff who have been trained in the facility's physical restraint procedures and techniques. These requirements are to insure that inappropriate and possibly harmful behavior management techniques are not applied to residents.
840	NA	Timeout Timeout is allowed only as permitted by other applicable state regulations.	This section was deleted, as the previous section on confinement was changed to timeout to be in agreement with the Human Rights Regulation.
850	920	Education A. Each resident of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia. B. The facility shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program. C. Facilities operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations. D. When a child with disabilities has been placed in a residential facility without the knowledge of school division personnel in the resident's home locality, the facility	A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment shall be kept in the resident's record. B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program. C. Providers operating educational programs for children with disabilities shall operate those programs in compliance

		shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of children with disabilities. E. A facility which has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.	with applicable state and federal statutes and regulations. D. When a child with a disability has been placed in a residential facility, the facility shall contact the division superintendent of the resident's home locality. Documentation of the contact with the resident's home school shall be kept in the resident's record. E. A provider that has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools. F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time. • A requirement was added that residents be enrolled in an educational program within 5 school business days of admission and documentation of the enrollment be kept in the record. • A requirement was added that documentation regarding contact with the resident's home school be kept in the record. • Wording was changed for clarity.
870	940	Recreation A. The facility shall have a written description of its recreation program which describes activities which are consistent (i) with the facility's total program and (ii) with the ages, developmental levels, interests, and needs of the residents. B. The facility shall have and implement a recreation program which is consistent with the written description and which includes: 1. Opportunities for individual and group activities; 2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program except this subdivision does not apply to secure custody facilities; 3. Use of available community recreational resources and facilities except this subdivision does not apply to secure custody facilities; 4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and 5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes. C. Recreational programs and field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the activities.	A. The provider shall have a written description of its recreation program which describes activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes: 1. Opportunities for individual and group activities; 2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program except this subdivision does not apply to secure custody facilities; 3. Use of available community recreational resources and facilities except this subdivision does not apply to secure custody facilities; 4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and 5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes. B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include: 1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities; 2. How residents are assessed for suitability for an activity and the supervision provided; and

			3. How safeguards for water related activities will be provided including ensuring that a certified life guard supervises all swimming activities. C. For all overnight recreational trips away from the facility the provider shall document trip planning to include: 1. A supervision plan for the entire duration of the activity including awake and sleeping hours; 2. A plan for safekeeping and distribution of medication; 3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration; 4. Staff training and experience requirements for each activity; 5. Resident preparation for each activity; 6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity; 7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated; 8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination; 9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and 10. Documentation of any variations from trip plans and reason for the variation. D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record. • A new requirement was added for the provider to develop and implement policies and procedures to ensure the safety of residents participating in recreational activities to include a certified life guard for all swimming activities. • To ensure that overnight trips are properly planned and that appropriate decisions are made, adds requirements that for all overnight recreational trips away from the facility, the provider will document trip planning to include: o A supervision plan for the entire duration of the activity including awake and sleeping hours; o Plan for safekeeping and distribution of medication; o Overall emergency, safety, and

			communication plan for the activity including emergency numbers of facility administration; o Staff training and experience requirements for each activity; o Resident preparation for each activity; o Plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity; o Trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated; o Plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination; o Plan to ensure that if residents are to participate in an swimming activity, a certified lifeguard will supervise the activity; and o Plan to ensure that any variation from the trip plans and the reason for the variation are documented. The expectations of trip planning will change depending on the facility size, the population served, the number of residents, and the type of trip. • A requirement was added that for all out-of-state or out-of-country trips written permission must be received from each resident's legal guardian and kept in the resident's record.
880	950	Community relationships A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community except this section does not apply to secure custody facilities. B. The facility shall have and implement written procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the	A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community, except this subsection does not apply to secure custody facilities. B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take

		facility.	residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest. C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large. D. Each provider shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the regulatory authority. • Added a requirement that each facility shall have a community liaison that will be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large • Added a requirement that each facility shall develop and implement policies and procedures for promoting positive relationships with the neighbors that shall be approved by the regulatory authority. • Added a requirement that each facility shall show evidence that staff have been trained on good neighbor policies and community relations.
910	980	Work and employment D. The facility shall have and implement written procedures to ensure that the work and pay of residents complies with applicable laws governing wages and hours and laws governing labor and employment of children. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.	D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay. The requirement that facilities have and implement policies and procedures to ensure that the work and pay of residents complies with applicable laws governing wages and hours and laws governing labor and employment of children in both work assignments and employment was changed to require the program director to evaluate the appropriateness of the work and the fairness of the pay.
925	1000	Resident Visitation at the Homes of Staff If a facility permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs.	If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record. A requirement was added to keep the written permission in the resident's record.
930	1010	Vehicles and power equipment. B. There shall be written safety rules which shall include taking head counts at each stop, which are appropriate to the population served, for transportation of children.	B. There shall be written safety rules for transportation of residents appropriate to the population served, which shall include taking head counts at each stop. Wording was changed for clarity.

940	NA	Reports to court. When the facility has received legal custody of a child pursuant to the Code of Virginia, copies of any foster care plans submitted to the court shall be placed in the resident's record.	This requirement was deleted as no facilities receive custody of the residents.
950	1030	Emergency reports B. The facility shall document the following: 1. The date and time the incident occurred; 2. A brief description of the incident; 3. The action taken as a result of the incident; 4. The name of the person who completed the report; 5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and 6. The name of the person to whom the report was made.	B. The provider shall document the following: 1. The date and time the incident occurred; 2. A brief description of the incident; 3. The action taken as a result of the incident; 4. The name of the person who completed the report; 5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and 6. The name of the person to whom the report was made. C. The provider shall notify the regulatory authority within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the regulatory authority. Such reports shall include: 1. The date and time the incident occurred; 2. A brief description of the incident; 3. The action taken as a result of the incident; 4. The name of the person who completed the report; 5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and 6. The name of the person to whom the report was made. • "Emergency report" was changed to "serious incident report" as this is the more accepted term. • It was clarified that the provider is to notify the regulatory authority within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the regulatory authority. The standard includes the elements of the report that is to be submitted.
960	1040	Suspected child abuse or neglect D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include: 1. The date and time the suspected abuse or neglect occurred; 2. A description of the incident; 3. Action taken as a result of the incident; and 4. The name of the person to whom the report was made at the local child protective services unit.	D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include: 1. The date and time the suspected abuse or neglect occurred; 2. A description of the suspected abuse or neglect; 3. Action taken as a result of the suspected abuse or neglect; and 4. The name of the person to whom the report was made at the local child protective services unit. The word incident was changed to

			suspected abuse or neglect.
965	1050	Grievance procedures	B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period. A requirement was added that all documentation regarding grievances be kept on file at the facility for three years, unless other regulations require a longer retention period.
970	1060	Emergency and evacuation procedures A. Written procedures shall be developed and implemented for responding to emergencies including, but not necessarily limited to: 1. Severe weather; 2. Loss of utilities; 3. Missing persons; 4. Severe injury; and 5. Emergency evacuation, including alternate housing. B. Written procedures shall address responsibilities of staff and residents regarding: 1. Sounding of an alarm; 2. Emergency evacuation including assembly points, head counts, primary and secondary means of egress, evacuation of children with special needs, and verifying complete evacuation of the buildings; 3. Alerting emergency authorities; and 4. Use of emergency equipment. C. Emergency procedures shall address the handling of residents with special needs. D. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents. E. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures. F. The telephone numbers of the authorities to be called in case of an emergency shall be prominently posted on or next to each telephone. G. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents. H. Evacuation drills shall include, at a minimum: 1. Sounding of emergency alarms; 2. Practice in evacuating buildings; 3. Practice in alerting emergency authorities; and 4. Simulated use of emergency equipment. I. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift. J. The facility shall assign at least one staff member responsibility for conducting and documenting evacuation drills. K. A record shall be maintained for each evacuation drill and shall include the following: 1. Buildings in which the drill was conducted; 2. Date and time of drill; 3. Amount of time to evacuate the buildings; 4. Specific problems encountered; 5. Staff tasks completed including:	A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address: 1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency; 2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery; 3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors and residents, property protection, community outreach, and recovery and restoration; 4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, students, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address: a. Communicating with employees, contractors and community responders; b. Warning and notification of residents; c. Providing emergency access to secure areas and opening locked doors; d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents; e. Relocating residents, if necessary; f. Notifying family members and legal guardians; g. Alerting emergency personnel and sounding alarms; h. Locating and shutting off utilities when necessary; 5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

		a. Head count, and b. Practice in notifying emergency authorities; 6. A summary; and 7. The name of the staff members responsible for conducting and documenting the drill and preparing the record. L. The record for each evacuation drill shall be retained for three years after the drill. M. The facility shall assign one staff member responsibility for the evacuation drill program at the facility who shall: 1. Ensure that evacuation drills are conducted at the times and intervals required by these interdepartmental standards and the facility's emergency procedures; 2. Review evacuation drill reports to identify problems in conducting the drills and in implementing the requirements of the emergency procedures; 3. Consult with the local emergency authorities, as needed, and plan, implement and document training or other actions taken to remedy any problems found in implementing the procedures; and 4. Consult and cooperate with local emergency authorities to plan and implement an educational program for facility staff and residents on topics in safety.	6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills. B. The provider shall develop emergency preparedness and response training for all employees, contractors, students/interns, and volunteers which shall include responsibilities for: 1. Alerting emergency personnel and sounding alarms; 2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, non-ambulatory); 3. Using, maintaining, and operating emergency equipment; 4. Accessing emergency information for residents including medical information; and 5. Utilizing community support services. C. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, and volunteers and incorporated into training for employees, contractors, students and volunteers and orientation of residents to services. D. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the provider shall take appropriate action to protect the health, safety and welfare of the residents and take appropriate action to remedy the conditions as soon as possible. E. Employees, contractors, students, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency. F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the legal guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the lead regulatory authority as soon as possible, but no later than 72 hours after the incident occurs. G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents. H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures. I. At least one evacuation drill (the simulation of the facility's emergency

			procedures) shall be conducted each month in each building occupied by residents. J. Evacuation drills shall include, at a minimum: 1. Sounding of emergency alarms; 2. Practice in evacuating buildings; 3. Practice in alerting emergency authorities; 4. Simulated use of emergency equipment; and 5. Practice in securing resident emergency information. K. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift. L. A record shall be maintained for each evacuation drill and shall include the following: 1. Buildings in which the drill was conducted; 2. Date and time of drill; 3. Amount of time to evacuate the buildings; 4. Specific problems encountered; 5. Staff tasks completed including: a. Head count, and b. Practice in notifying emergency authorities; and 6. The name of the staff members responsible for conducting and documenting the drill and preparing the record. M. The record for each evacuation drill shall be retained for three years after the drill. N. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met. • Language regarding emergency planning was changed to be consistent with other state regulations. • A requirement was added to develop an emergency preparedness and response plan for all locations with consultation of the local emergency coordinator. • A requirement was added that the provider develop and implement emergency preparedness and response training for all employees, contractors, students, and volunteers within 14 days of begin date or before an individual is alone supervising residents and annually thereafter.
980,990, and 1000		In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety or well-being of the children, the facility shall: 1. Take appropriate action to protect the health, safety and well-being of the children;	• Sections were deleted as requirements were moved to 1060.

		2. Take appropriate actions to remedy the conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and 3. Notify the regulatory authorities as soon as possible of the conditions at the facility and the status of the residents. A. The facility shall develop a written plan to be implemented in case of a fire. B. Procedures and responsibilities reflected in the written fire plan shall be communicated to all residents within seven days following admission or a substantive change in the plan. C. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone. A. Each staff member shall be trained in fire procedures in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51-10 et.seq.). B. Each new staff member shall be trained in emergency procedures and their implementation prior to working alone while supervising one or more children and within seven days of employment.	
NA	1070		Independent living programs A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the regulatory authority, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas: 1. Money management and consumer awareness; 2. Food management; 3. Personal appearance; 4. Social skills; 5. Health/Sexuality; 6. Housekeeping; 7. Transportation; 8. Educational planning/career planning; 9. Job seeking skills; 10. Job maintenance skills; 11. Emergency and safety skills; 12. Knowledge of community resources; 13. Interpersonal skills/social relationships; 14. Legal skills; 15. Leisure activities; and 16. Housing. B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the regulatory agency. The assessment must cover the following areas: 1. Money management and consumer awareness; 2. Food management; 3. Personal appearance; 4. Social skills; 5. Health/Sexuality; 6. Housekeeping; 7. Transportation; 8. Educational planning/career planning; 9. Job seeking skills; 10. Job maintenance skills; 11. Emergency and safety skills;

			12. Knowledge of community resources; 13. Interpersonal skills/social relationships; 14. Legal skills; 15. Leisure activities; and 16. Housing. C. The resident's individualized service plan shall include, in addition to the requirements found in 22 VAC 42-11-630, goals, objectives, and strategies addressing each of the following areas, as applicable: 1. Money management and consumer awareness; 2. Food management; 3. Personal appearance; 4. Social skills; 5. Health/Sexuality; 6. Housekeeping; 7. Transportation; 8. Educational planning/career planning; 9. Job seeking skills; 10. Job maintenance skills; 11. Emergency and safety skills; 12. Knowledge of community resources; 13. Interpersonal skills/social relationships; 14. Legal skills; 15. Leisure activities; and 16. Housing. D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation shall be kept in the employee's staff record. E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures which include: 1. Training for the resident in self administration and recognition of side effects; 2. Method for storage and safekeeping of medication; 3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and 4. Method for documenting the administration of medication. F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 22 VAC 42-11-820.A-C. • Independent Living programs must use approved independent living curriculums and materials covering 16 required topics. • Within 14 days of placement an assessment must be completed on each resident using an

			approved assessment tool and covering the 16 topics. • Resident's service plans must reflect the 16 topic areas. • Staff must be trained within 14 days of hire on the curriculum and materials used by the program. • Requirements added as several programs identified themselves as independent living programs but offered few structured services.
NA	1080	Mother/Baby programs	Mother/baby programs A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following: 1. Responsibilities of mothers regarding the child; 2. Child development including age appropriate behavior for each stage of development; 3. Appropriate behavioral interventions for infants and toddlers; 4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and 5. Safety issues for infants and toddlers. B. Each direct care worker shall have certification in infant CPR and First Aid prior to working alone with infants or toddlers. C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed by the legal guardian for each child at the time of admission. D. In addition to the requirements of 22 VAC 42-11-680.B, the application for admission for the adolescent's child must include: 1. The placement history of the child; 2. The developmental milestones of the child; and 3. The nutritional needs of the child. E. In addition to the requirements of 22 VAC 42-11-700, the face sheet for the adolescent's child shall also include: 1. Type of delivery; 2. Weight and length at birth; 3. Any medications or allergies; and 4. Name and address, if known, of the biological father. F. A combined service plan following the requirements of 22 VAC 42-11-720 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child. G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90 day period thereafter. H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

			I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen. J. The provider shall develop and implement written policies and procedures for tracking: 1. What a child 18 months or younger is eating; 2. How much a child 18 months or younger is eating; and 3. The response to newly introduced foods of the child 18 months or younger. K. The provider shall develop and implement written policies and procedures to record all diaper changes. L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake. M. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped. N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation. O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility. P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities. Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including: 1. Obtaining health care: 2. Ensuring follow-up care is provided; 3. Ensuring adolescent mothers administer to their children only prescription and non-prescription medication authorized by a health care professional licensed to prescribe medication; and 4. Medication administration. R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, of safe construction, are non-toxic and free of hazards, and meet industry safety standards. S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety. T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

			U. Pillows and filled comforters shall not be used by children under two years of age. V. Infant walkers shall not be used. W. Adolescent mothers and their babies may share a bedroom as allowed by 22 VAC 42-11-480.E, but shall not share a room with other adolescents or their children. X. Pregnant adolescents may share a room as allowed by 22 VAC 42-11-480. Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from: 1. Electrocution; 2. Falling down steps or ramps or gaining access to balconies, windows, porches or elevated areas; 3. Poisons, including poisonous plants; and 4. Drowning. • A new section was added for mother/baby programs. • Requirements were added for staff training specific to working with babies and toddlers. • Requirements were added for documentation of information regarding the baby/toddler. • Requirements were added to ensure the safety of the infant toddler and to ensure the baby's proper development. The number of mother/baby programs is increasing and the regulation had few standards to address this type of program.
Initial Application	NA	Forms	Added to the certifications that the applicant has received and read information regarding the siting of a children's residential facility.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternate regulatory methods for small businesses that can be used and still ensure that the appropriate protections, services and education are offered to residents of children's residential facilities.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The changes to the regulation will better assure families who must place their children in a residential facility that safeguards exist to protect their child, and that adequate care and education are provided.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

22 VAC 42-11-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Annual" means within ~~12~~ 13 months of the previous event or occurrence.

"Applicable state regulation" means any regulation which the promulgating state agency determines applies to the facility. The term includes, but is not necessarily limited to modules, standards, and other regulations promulgated by the Departments of Education; Health; Housing and Community Development; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; or other state agency.

"Applicant" means the person, corporation, partnership, association, or public agency which has applied for a license or certificate.

~~"Application" means a document completed by the facility to furnish the regulatory authority details about the facility's operations and includes certifications that the facility understands and intends to comply with regulatory requirements. An application includes inspection reports necessary to verify compliance with applicable requirements of other state agencies. An application is complete when all required information is~~

~~provided and the application is signed and dated by the individual legally responsible for operation of the facility.~~

"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substance (e.g. hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity which when applied to an ~~individual~~ resident are noxious or painful to the individual, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the ~~individual~~ resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner, in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities except the performance of medical procedures by medical personnel.

"Case record" or "Record" means up to date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to care of the resident, service plan with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming in contact with the resident or facility (e.g. visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g. staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of ~~public welfare or~~ social services authorized to place children in foster homes or adoptive homes.

~~"Child with special needs" means a child in need of particular services because the child has mental retardation, a developmental disability, mental illness, emotional disturbance, a substance abuse problem, is in need of special educational services, or requires security services.~~

~~"Child with a visual impairment" means one whose vision, after best correction, limits the child's ability to profit from a normal or unmodified educational or daily living setting.~~

"Children's residential facility " or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children

separated from their legal guardians and which is required to be licensed or certified by the *Code of Virginia* except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds; and

2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services and the Individual and Family Development Disabilities Support Waiver, 12 VAC 35-105-10 et seq.

"Complaint" means an accusation against a licensed or certified facility regarding an alleged violation of standards or law.

"Confined in post-dispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in §16.1-284.1.B ~~in~~ of the *Code of Virginia.*

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item which conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to, (i) striking

or hitting with any part of the body or with an implement; (ii) through pinching, pulling, or shaking; or (iii) through any similar action which normally inflicts pain or discomfort.

"Corrective action plan" means violations documented by the regulatory authority and the facility's submitted pledged corrective action to the documented violations ~~within a specified time frame.~~ cited by the regulatory authority.

"Day" means calendar day unless the context clearly indicates otherwise.

"Detention home" or "secure detention" means a local, regional or state, publicly or privately operated secure custody facility which houses juveniles who are ordered detained pursuant to the *Code of Virginia*. The term does not include juvenile correctional centers.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DOE" means the Department of Education.

"DJJ" means the Department of Juvenile Justice.

"DSS" means the Department of Social Services.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations which should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care except self admittance to a temporary care facility or a court ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and which are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family and community relationships which are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12 residents.

"Health record" means the file maintained by a provider which ~~houses~~ contains personal health information.

"Human research" means any systematic investigation ~~utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.~~ including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the regulatory authority to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies and time frames for reaching the goals and the individuals responsible for carrying out ~~a~~ the plan.

"Interdepartmental standards" means the standards for residential care which are common to the departments and which must be met by a children's residential facility in order to qualify for a license or certificate.

"Juvenile correctional center" means a secure custody facility operated by, or under contract with, the Department of Juvenile Justice to house and treat persons committed to the Department of Juvenile Justice.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License or certificate" means a document verifying approval to operate a children's residential facility and which indicates the status of the facility regarding compliance with applicable state regulations.

"Live in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living Unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

"Medication error" means ~~that~~ an error ~~has been~~ made in administering a medication to a resident ~~when any of the following occur~~ including the following: (i) the wrong

medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided ~~evidence~~ documentation that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, which provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means the information that encompasses the universe of oral, written or otherwise recorded information that is created or received by an entity ~~and~~ relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when the individual's behavior places him or others at imminent risk and ~~when~~ the administered medication is not a standard treatment for the individual's medical or psychiatric condition ~~when that individual's behavior places him or others at imminent risk~~.

"Physical restraint" (also referred to as a "manual hold") means use of a physical interventions or "hands-on" hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Placement" means an activity by any person which provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or to a children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider or Licensee or Sponsor" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the ~~standards~~ regulatory and statutory requirements relating to the facility.

"Regulatory authority or agency" means the department or state board that is responsible under the *Code of Virginia* for the licensure or certification of a children's residential facility.

"Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

~~"Right" is something to which one has a legal or contractual claim.~~

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone, in an area secured by a door that is locked or held shut by a staff person~~,~~ by physically blocking the door~~,~~ or by any other physical or verbal means so that the individual cannot leave it.

"Secure custody facility" means a detention home or a juvenile correctional center with physical barriers that regulate movement.

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Severe weather" means extreme environment or climate conditions which pose a threat to the health, safety, or welfare of residents.

~~"Shall" means an obligation to act is imposed.~~

~~"Shall not" means an obligation not to act is imposed.~~

"Standard" means a statement which describes in measurable terms a required minimum performance level. The term standard and the term regulation may be used interchangeably.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured Program of Care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is

either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Systemic deficiency" means violations documented by the regulatory authority which demonstrate defects in the overall operation of the facility or one or more of its components.

"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary care facility" means a facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days except that this term does not include secure detention facilities.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of an ~~individual~~ resident by a staff person from a source of reinforcement to a different, open location for a specified period of time

or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship; and (ii) resident care will not be adversely affected. ~~The denial of a request for a variance is appealable when it leads to the denial or revocation of a license or certificate.~~

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

"Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, ~~and~~ or community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group

process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.

22 VAC 42-11-20. Interdepartmental Cooperation.

The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services shall assist and cooperate with each other in the licensing and certification of children's residential facilities.

22 VAC 42-11-30. Applications.

A. Initial applications

1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources, or, a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a description of the program; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; copy of floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and if required by the regulatory authority, references for three officers of the board, if applicable. This information ~~must~~ shall be submitted to

and approved by the lead regulatory agency in order for the application to be considered complete.

2. All initial applications which are not complete within 12 months ~~will~~ shall be closed.

3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.

4. Currently licensed providers ~~must~~ shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.

B. Renewal applications

A completed application for renewal of a facility's license or certificate shall be submitted within 30 days after being notified to submit a renewal application.

22 VAC 42-11-40. The Investigation.

The regulatory authority or regulatory authorities shall arrange and conduct an on-site inspection of the facility and a thorough review of the services, and an ~~investigate~~ investigation of the character, reputation, status, and responsibility of the applicant.

22 VAC 42-11-50. Review of Facilities.

A. Representatives of the ~~departments~~ regulatory authorities shall make announced and unannounced reviews during the effective dates of the license/certificate. The purpose of these reviews is to monitor compliance with applicable standards.

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B. The regulatory authority shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license or certificate to provisional status.

22 VAC 42-11-60. Posting of Information.

A. Information concerning the application for initial licensure of children's residential facilities shall be posted ~~to~~ on the Interdepartmental Regulation web site, by locality.

B. An accurate listing of all licensed or certified facilities including information on renewal, denial, or provisional licensure, services and identification of the lead regulatory authority shall be posted ~~to~~ on the Interdepartmental Regulation web site, by locality.

22 VAC 42-11-70. General Requirements.

A. The ~~facility~~ provider shall demonstrate ~~full~~ substantial compliance with ~~sufficient applicable~~ these standards to ~~clearly~~ demonstrate that its program and physical plant provides reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances which pose an immediate and direct danger to residents.

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law.

C. The ~~facility~~ provider shall comply with the terms of its license or certificate.

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D. A license or certificate is not transferable and automatically expires when there is a change of ownership or sponsorship.

E. The current license or certificate shall be posted at all times in a place conspicuous to the public.

F. A license or certificate shall not be issued to a facility when noncompliance poses an immediate danger to the resident's life, health, or safety.

G. Intermediate sanctions authorized by statute may be imposed at the discretion of the regulatory authorities.

H. Each ~~facility~~ provider shall self-report within ~~72 hours~~ 10 days, to the lead regulatory agency, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents.

I. The provider shall comply with all other applicable federal, state, or local laws and regulations.

J. The provider's current policy and procedure manual shall be readily accessible to all staff.

K. The provider shall comply with ~~their~~ its own policies and procedures.

22 VAC 42-11-80. Written corrective action plans.

A. Facilities regulated by the Department of Juvenile Justice shall comply with the Board of Juvenile Justice's certification regulations governing corrective action plans.

~~A~~B. If there is noncompliance with ~~any of these~~ applicable standards during an initial or ongoing review or investigation, the regulatory authority shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan.

~~B~~C. The provider shall submit to the regulatory authority and implement a written corrective action plan for each standard ~~found to be in noncompliance as identified on the licensing report~~ for which the provider is found to be in noncompliance.

~~C~~D. The ~~plan of~~ corrective action plan shall include a:

1. Description of each corrective action to be taken and the person responsible for implementation;

2. Date of completion for each action; and

3. Signature of the person responsible for oversight of the implementation of the pledged corrective action.

D. The provider shall submit the corrective action plan to the regulatory authority within 15 business days of the issuance of the licensing report. Extensions may be granted by the regulatory authority when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action shall be required if the regulatory authority determines that the violations ~~are related~~ pose a threat to the health, safety or welfare of residents.

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E. A corrective action plan shall be approved by the regulatory authority. The provider ~~has~~ shall have an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.

22 VAC 42-11-90. Licenses/Certificates.

A. The Board of Juvenile Justice shall issue a certificate to each facility regulated by the board, indicating the facility's certification status when the facility is in compliance with these interdepartmental standards, other applicable regulations issued by the board, and applicable statutes. The certificate shall be effective for the period specified by the board unless it is revoked or surrendered sooner.

B. Facilities Regulated by DOE, DMHMRSAS, or DSS.

1. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements, but has not demonstrated compliance with all of the Interdepartmental Standards. A conditional license shall not exceed six months unless allowed by the Code of Virginia.

2. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with the Interdepartmental Standards, or other applicable regulations; has violations of licensing standards that pose a threat to the health or safety of residents being served; ~~has multiple violations of licensing standards;~~ or ~~has failed to comply with a previous corrective action plan and~~ has ~~one~~ two or more systemic deficiencies.

a. A provisional license may be issued at any time.

b. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia.

3. An annual license or certificate:

a. Shall be issued when the provider applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of the Interdepartmental Standards and other regulations and statutes.

b. May be issued at any time, if the provider has received one systemic deficiency.

c. May be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined.

4. A triennial license or certificate shall be issued when the provider:

a. Applies for renewal while holding an annual or triennial license or certificate and

b. Substantially meets or exceeds the requirements of the Interdepartmental Standards and other applicable regulations and statutes.

C. The term of a facility's license or certificate may be modified at any time during the licensure or certification period based on a change in the facility's compliance with ~~this regulation~~ these standards and other applicable statutes and regulations.

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22 VAC 42-11-100. Application Fees.

A. There shall be a $500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn, all subsequent initial applications ~~will~~ shall require another $500 fee.

B. There shall be a $100 nonrefundable renewal application fee.

C. ~~No~~ A renewal fee ~~will~~ shall not be charged to providers directly following the issuance of a conditional license.

D. ~~This~~ The application fee ~~does~~ shall not apply to state or locally owned, operated, or contracted facilities.

E. ~~Such~~ Application fees ~~are to~~ shall be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.

22 VAC 42-11-110. Modification.

A. The conditions of a license or certificate may be modified during the term of the license or certificate with respect to the capacity, residents' age range, facility location, gender, or changes in the services. Limited modifications may be approved during the conditional licensure or certification period.

B. The provider shall submit a written report of any contemplated changes in operation which would affect the terms of the license or certificate or the continuing eligibility for licensure or certification to the lead regulatory authority.

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C. A change shall not be implemented prior to approval by the regulatory authority. ~~A determination will be made as to whether changes will be approved and the license or certificate modified accordingly or whether an application for a new license or certificate must be filed.~~ The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required.

22 VAC 42-11-120. Denial.

A. An application for licensure or certification may be denied when the applicant:

1. Violates any provision of applicable laws or regulations made pursuant to such laws;

2. Has a founded disposition of child abuse or neglect after the appeal process has been completed;

3. Has been convicted of a crime listed in §§ 37.2-416 or 63.2-1726 of the Code of Virginia;

4. Has made false statements on the application or misrepresentation of facts in the application process;

5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials; or

6. Has a history of adverse licensing actions or sanctions.

B. If denial of a license or certificate is recommended, the facility ~~will~~ shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

22 VAC 42-11-130. Revocation.

A. ~~The~~ A license or certificate may be revoked when the provider:

1. Violates any provision of applicable laws or ~~applicable~~ regulations ~~made pursuant to such laws~~;

2. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children;

3. Deviates significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or fails to correct such deviations within the specified time; or

4. Engages in a willful action or gross negligence which jeopardizes the care or protection of residents.

B. If revocation of a license or certificate is recommended, the facility ~~will~~ shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

22 VAC 42-11-140. Summary Suspension.

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health,

safety, and welfare of the residents, the lead regulatory authority agency head may issue an order of summary suspension of the license or certificate to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the regulatory authority shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The lead regulatory authority shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;

2. The procedures for the hearing;

3. The hearing and appeal rights; and

4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The regulatory authority shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license or certificate should be summarily suspended, to the lead regulatory agency head within five business days of the hearing.

G. The lead regulatory agency head shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The lead regulatory agency head shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations, and (ii) notice that the children's residential facility may appeal the lead regulatory agency head's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

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I. The facility may appeal the lead regulatory agency head's decision on the summary suspension to the appropriate circuit court no more than ten days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the lead regulatory authority shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

22 VAC 42-11-150. Variances.

A. Any request for a variance shall be submitted in writing to the regulatory authority and ~~should~~ shall include a:

1. Justification why enforcement of the standard would create an undue hardship; ~~and~~

2. How the facility can comply with the intent of the standard; and

~~2~~3. Justification why resident care would not be adversely affected if the variance was granted.

B. A variance shall not be ~~effected~~ implemented prior to approval of the regulatory authority.

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22 VAC 42-11-160. Investigation of Complaints and Allegations.

The ~~departments~~ Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse ~~Service~~ Services; and Social Services are responsible for complete and prompt investigation of all complaints and allegations ~~at the facilities where~~ made against providers for which they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law enforcement authority.

22 VAC 42-11-170. Governing Body.

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

B. The provider shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the provider.

22 VAC 42-11-180. Responsibilities of the Provider.

A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.

B. The provider shall develop and implement a written decision making plan which shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the

operation of the facility. Each plan ~~must~~ shall ~~be approved by the regulatory agency and~~ include an organizational chart.

C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.

D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness, on a systematic and on-going basis. The provider shall implement improvements when indicated.

22 VAC 42-11-190. Fiscal Accountability.

A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare, at the end of each fiscal year:

1. An operating statement showing revenue and expenses for the fiscal year just ended;

2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and

3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

C. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;

2. Writing of checks; and

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3. Handling of petty cash.

22 VAC 42-11-200. Insurance.

A. The ~~facility~~ provider shall maintain liability insurance covering the premises and the facility's operations.

B. The ~~facility~~ provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

C. The members of the governing body and staff who have been authorized to handle the facility's or ~~resident's~~ residents' funds shall be bonded or otherwise indemnified against employee dishonesty.

22 VAC 42-11-210. Fund-Raising.

The ~~facility~~ provider shall not use residents in its fund-raising activities without written permission of the legal guardian and the permission of residents 14 years or older.

22 VAC 42-11-220. Weapons.

The ~~facility~~ provider shall develop and implement ~~a~~ written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and ~~on~~ during facility related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility sponsored activities unless the weapons are:

1. In the possession of licensed security personnel or law enforcement officers;

2. Kept securely under lock and key; or

3. Used by a resident with the legal guardian's permission, under the supervision of a responsible adult, in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

22 VAC 42-11-230. Relationship to Regulatory Authority.

A. The provider shall submit or make available to the regulatory authority such reports and information as the regulatory authority may require to establish compliance with these interdepartmental standards and other applicable regulations and statutes.

B. The governing body or its official representative shall notify the regulatory authorities within five working days of any change in administrative structure or newly hired chief administrative officer or program director.

22 VAC 42-11-240. Facilities Serving Persons Over the Age of 17 Years.

Facilities which are approved to serve persons over the age of 17 years shall comply with these interdepartmental standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing, programs, services, and supervision for such persons are provided separately from those for the other residents.

22 VAC 42-11-250. Health Information.

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information is to be

handled, maintained and stored in a fashion which maintains confidentiality of the information at all times.

B. Tuberculosis Evaluation.

1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

2. Each individual shall annually submit the results of a -screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health.

C. Subsequent Evaluations for Tuberculosis

1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

2. An individual who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

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D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis.

E. The ~~facility~~ provider shall report any active case of tuberculosis developed by a staff member or a resident to the local health department.

22 VAC 42-11-260. Physical or Mental Health of Personnel.

A. The provider or the regulatory authority may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental, or emotional health may jeopardize the care of residents.

B. An individual who is determined by a licensed physician or mental health professional, to show an indication of a physical or mental condition which may jeopardize the safety of residents or which would prevent the performance of duties shall be removed immediately from contact with residents and food served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22 VAC 42-11-270. Qualifications.

A. Standards establishing minimum position qualifications shall be applicable to all ~~facilities~~ providers. In lieu of the minimum position qualifications contained in this chapter, ~~facilities~~ providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local

government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards after the effective date of these standards shall:

1. Meet the qualifications of the position or positions;

2. Fully comply with all applicable standards for each function; and

3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions.

C. When services or consultation are obtained on a contractual basis they shall be provided by professionally qualified personnel.

22 VAC 42-11-280. Job Descriptions.

A. There shall be a written job description for each position which, at a minimum, includes the:

1. Job title;

2. Duties and responsibilities of the incumbent;

3. Job title of the immediate supervisor; and

4. Minimum education, experience, knowledge, skills, and abilities required for entry level performance of the job.

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B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

22 VAC 42-11-290. Written Personnel Policies and Procedures.

A. The provider shall have and implement provider approved written personnel policies and make its written personnel policies readily accessible to each staff member.

B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

22 VAC 42-11-300. Personnel Records.

A. Separate up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, students/interns and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;

2. Educational background and employment history;

3. Written references or notations of oral references;

4. Reports of required health examinations;

5. Annual performance evaluations;

6. Date of employment for each position held and separation;

7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;

8. Documentation of educational degrees and of professional certification or licensure;

9. Documentation of all training required by ~~this regulation~~ these standards and any other training received by individual staff; and

10. A current job description.

C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service.

22 VAC 42-11-310. Staff Development.

A. Required initial training:

1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures and techniques regarding less restrictive interventions, timeout, and physical restraint.

2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall ~~implement~~ conduct emergency preparedness and response training which shall include:

a. Alerting emergency personnel and sounding alarms;

b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, non-ambulatory);

c. Using, maintaining, and operating emergency equipment;

d. Accessing emergency information for residents including medical information; and

e. Utilizing community support services.

3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same ~~sponsor~~ provider, relief staff, volunteers and students/interns shall be given orientation and training regarding:

a. The objectives of the facility;

b. Practices of confidentiality;

c. The decision making plan;

d. The Standards for Interdepartmental Regulation of Children's Residential Facilities including the prohibited actions as outlined in this regulation; and

e. Other policies and procedures that are applicable to their positions and their duties and responsibilities.

4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.

5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect; mandatory reporting; maintaining appropriate professional relationships and interaction among staff and residents; and suicide prevention.

6. Within 30 days following their begin date or as required by other state or federal regulations, all staff shall be trained on the facility's policies and procedures regarding ~~universal~~ standard precautions.

7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities and good neighbor policies and community relations.

8. Before they can administer medication, all staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan.

B. Required annual retraining:

1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training which shall include:

a. Alerting emergency personnel and sounding alarms;

b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, non-ambulatory);

c. Using, maintaining, and operating emergency equipment;

d. Accessing emergency information for residents including medical information; and

e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior intervention and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect; mandatory reporting; maintaining appropriate professional relationships and interaction among staff and residents; and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding ~~universal~~ standard precautions.

~~D~~C. Each full time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.

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~~E~~D. ~~Facilities~~ Providers shall develop and implement written policies and procedures to ensure that part time staff receive training applicable to their positions.

~~F~~E. Training provided ~~will~~ shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

22 VAC 42-11-320. Staff Supervision.

The provider shall develop and implement written policies and procedures regarding the supervision of staff, volunteers, contractors and students/interns. These policies and procedures shall include:

1. Type of supervision;

2. Frequency of supervision; and

3. How the supervision will be documented.

22 VAC 42-11-330. The Applicant.

A. Each applicant shall ~~show evidence~~ provide documentation that they have been trained on appropriate siting of children's residential facilities and good neighbor policies and community relations.

B. The applicant shall be interviewed in person by the regulatory authority to determine the qualifications of the owner or operator as set out in ~~this regulation~~ these standards.

C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in ~~this regulation~~ these standards, to perform the duties of the chief administrative officer.

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22 VAC 42-11-340. The Chief Administrative Officer.

A. The chief administrative officer shall have the following responsibilities:

1. Responsibility for compliance with the Standards for Interdepartmental Regulation of Children's Residential Facilities and other applicable standards and statutes;

2. Responsibility for overseeing all personnel;

3. Overseeing facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and

4. Responsibility for the facility's financial integrity.

B. A chief administrative officer appointed after the effective date of these standards shall have at least:

1. A master's degree in social work, psychology, counseling, ~~or~~ nursing or administration and ~~two years of full time paid work experience in a children's residential facility and one year full time experience in an administrative or supervisory capacity~~ a combination of two years professional experience working with children and in administration and supervision ; or

2. A baccalaureate degree in social work, psychology, counseling, ~~or~~ nursing or administration and three years of combined ~~full time paid work~~ professional experience with children, ~~at least two of which were~~ ~~in a children's residential facility~~ and ~~one year of~~ in administrative and supervisory experience; or

~~4~~3. A baccalaureate degree and a combination of ~~seven~~ four years ~~of full time paid work~~ professional experience ~~with children~~ ~~at least four of which shall be~~ in a children's residential facility and ~~two years of administrative or supervisory experience~~ in administration and supervision.

~~3~~4. For a program whose lead regulatory agency is the Department of Education, ~~A~~ a master's degree in education and a combination of two years of ~~full time paid work~~ professional experience ~~in a children's residential facility~~ working with children and ~~one year full time experience~~ in ~~an administrative or supervisory capacity~~ administration and supervision or a baccalaureate degree in education and a combination of three years ~~full time paid work~~ professional experience with children, ~~at least two of which were in a children's residential facility and one year of administrative or supervisory experience~~ and in administration and supervision may be accepted ~~for a chief administrative officer of a program whose lead regulatory agency is the Department of Education; or~~.

C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

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22 VAC 42-11-350. Program Director.

A. The facility's program shall be directed by one or more qualified persons.

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision.

C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full time, qualified staff members.

D. A person appointed after the effective date of these standards to direct programs shall have at least:

1. A master's degree in social work, psychology, counseling, or nursing and a combination of two years ~~of full time paid work~~ professional experience with children, ~~one of which needs to be~~ in a children's residential facility and ~~one year of~~ in ~~administrative or supervisory experience~~ administration or supervision;

2. A baccalaureate degree in social work, psychology, counseling or nursing and a combination of three years ~~full time paid~~ professional experience ~~working~~ with children, ~~one of which must be~~ in a children's residential facility and ~~one year of administrative or supervisory experience~~ in administration or supervision;

~~4~~3. A baccalaureate degree and a combination of ~~five~~ four years of ~~full time paid~~ professional experience working with children, ~~at least three of which must be~~ in a

children's residential facility and ~~one year of full time supervisory or administrative experience~~ in administration or supervision; or

~~3~~4. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism;

5. For a program whose lead regulatory agency is the Department of Education, ~~A~~ a master's degree in education and a combination of two years of ~~full time paid work~~ professional experience with children, ~~one of which needs to be~~ in a children's residential facility and ~~one year of administrative or supervisory experience~~ in administration or supervision or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and a combination of three years ~~full time paid~~ professional experience working with children, ~~one of which must be~~ in a children's residential facility and ~~one year of administrative or supervisory experience~~ in administration or supervision ~~may be accepted for a program director~~ of ~~a program whose lead regulatory agency is the Department of Education.~~

E. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

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22 VAC 42-11-360. Case manager.

A. Case managers shall have the responsibility for:

1. Coordination of all services offered to each resident; and

2. Provision of case management services as required in 22 VAC 42-11-760.A.

B. Case managers shall have:

1. A master's degree in social work, psychology, or counseling; or

2. A baccalaureate degree in social work or psychology with documented field work experience and must be supervised by the program director or other staff employed by the provider with the same qualifications as required by 22 VAC 42 -11-350.D; or

3. A baccalaureate degree and three years of ~~full time paid~~ professional experience working with children ~~at least one of which shall be in a children's residential facility~~.

22 VAC 42-11-370. Child care supervisor.

A. Child care supervisors shall have responsibility for the:

1. Development of the daily living program within each child care unit; and;

2. Orientation, training and supervision of direct care workers.

B. Child care supervisors shall have:

1. A baccalaureate degree in social work or psychology and two years of ~~full time paid~~ professional experience working with children, one year of which must have been in a residential facility for children;

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years ~~full time paid~~ professional experience working with children with at least two years in a residential facility for children; or

3. A combination of education and experience working with children as approved by the lead regulatory authority.

22 VAC 42-11-380. Child care staff.

A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including:

1. Overseeing physical care;

2. Development of acceptable habits and attitudes;

3. Management of resident behavior; and

4. Helping to meet the goals and objectives of any required service plan.

B. A child care worker and a relief child care worker shall:

1. Have a baccalaureate degree in human services;

2. Have an associates degree and three months experience working with children; or

3. Be a high school graduate or have a General Education Development Certificate (G.E.D.) and have six months of experience working with children.

C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, ~~or~~ case manager, child care

supervisor or a child care worker with one or more years professional experience working with children. This section does not apply to the juvenile correctional facilities where staff are trained in a comprehensive basic skills curriculum before beginning their child care duties.

D. An individual hired, promoted, demoted, or transferred to a child care worker's position after the effective date of these standards shall be at least 21 years old, except as provided in 22 VAC 42-11-270.A.

E. The provider shall not be dependent on temporary contract workers to provide ~~child~~ resident care.

22 VAC 42-11-390. Relief Staff.

Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with 22 VAC 42-11-780.

22 VAC 42-11-400. Volunteers and Students/Interns.

A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.

B. The facility shall not be dependent upon ~~use of~~ volunteers or students/interns to provide basic services.

C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.

D. Volunteers and students/interns shall have qualifications appropriate to the services they render.

22 VAC 42-11-410. Support Functions.

A. Child care workers and other staff responsible for child care may assume the duties of non-child care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions, including but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

22 VAC 42-11-420. Buildings, Inspections and Building Plans.

A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.

C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51-10 et. seq.).

D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

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1. General sanitation;

2. The sewage disposal system;

3. The water supply; and

4. Food service operations.

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the lead regulatory agency and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

22 VAC 42-11-430. Heating Systems, Ventilation and Cooling Systems.

A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 68° F is maintained, unless otherwise mandated by state or federal authorities.

B. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

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C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

22 VAC 42-11-440. Lighting.

A. Artificial lighting shall be by electricity.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. Lighting in halls shall be adequate and shall be continuous at night.

D. Operable flashlights or battery powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies.

E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

22 VAC 42-11-450. Plumbing.

A. Plumbing shall be maintained in good operational condition.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100° – 120° F.

22 VAC 42-11-460. Toilet Facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981~~, and have made no structural changes or constructed any buildings~~.

D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after the effective date of these standards ~~must~~ shall comply with the one to four ratio.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

F. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals and secure custody facilities.

22 VAC 42-11-470. Personal Necessities.

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often, if needed.

C. When residents are incontinent or not toilet trained:

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be ~~available~~ used to dispose of diapers. If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.

5. Appropriate privacy, confidentiality and dignity shall be maintained for residents during toileting and diapering.

22 VAC 42-11-480. Sleeping Areas.

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children ~~may~~ shall share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers.

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities licensed by the DSS prior to July 1, 1981, and facilities established, constructed or structurally modified after July 1, 1981, except for primitive campsites, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7½ feet in height exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often, if needed.

H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code.

I. Cribs shall be provided for residents under two years of age.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

J. Each resident shall be assigned drawer space and closet space, or their equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities.

K. The ~~sleeping areas'~~ environment of ~~the~~ sleeping areas shall be conducive to sleep and rest.

22 VAC 42-11-490. Smoking Prohibition.

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

22 VAC 42-11-500. Residents' Privacy.

A. When bathrooms are not designated for individual use, except in secure custody facilities:

1. Each toilet shall be enclosed for privacy, and

2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency. In secure custody facilities, the door may be equipped with an observation window.

D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This

section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

E. Video and audio monitoring shall be permitted only ~~in common hallways and common areas. All such monitoring shall have the approval of the regulatory authority and if licensed by DMHMRSAS the approval of the Office of Human Rights. DJJ certified facilities shall obtain the approval of the regulatory authority before any video or audio monitoring is permitted. Video and audio monitoring is prohibited in bathrooms, dressing areas, and bedrooms~~ with the approval of the lead regulatory agency and for facilities licensed by DMHMRSAS, the approval of the Office of Human Rights.

22 VAC 42-11-510. Living Rooms and Indoor Recreation Space.

A. Each living unit, except for secure custody, shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is appropriate to the ages of the residents.

B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents.

C. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

22 VAC 42-11-520. Study Space.

A. Facilities serving a school age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well lighted, quiet, and equipped with tables or desks and chairs.

22 VAC 42-11-530. Kitchen and Dining Areas.

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs which are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

22 VAC 42-11-540. Laundry Areas.

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

22 VAC 42-11-550. Storage.

Space shall be provided for safe storage of items such as first aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

22 VAC 42-11-560. Staff Quarters.

A. A separate, private bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

B. A separate private bathroom shall be provided for staff and their families when there are more than four persons in the living unit and the staff person is on duty for 24 consecutive hours or more.

C. Staff and members of their families shall not share bedrooms with residents.

22 VAC 42-11-570. Office Space.

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

22 VAC 42-11-580. Buildings and Grounds.

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

22 VAC 42-11-590. Equipment and Furnishings.

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, non-pay telephone accessible to staff in each building in which children sleep or participate in programs.

22 VAC 42-11-600. Housekeeping and Maintenance.

A. All buildings shall be well-ventilated and free of stale, musty, or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats, and other vermin.

D. A sanitizing agent shall be used in the laundering of bed, bath, table, and kitchen linens.

22 VAC 42-11-610. Farm and Domestic Animals.

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated and licensed as required by law.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

C. The premises shall be kept free of stray domestic animals.

D. Pets shall be provided with clean quarters and adequate food and water.

22 VAC 42-11-620. Acceptance of Children.

Children shall be accepted only by court order or by written placement agreement with legal guardians. This requirement does not apply to temporary care facilities when self-admission is made according to Virginia law.

22 VAC 42-11-630. Admission Procedures.

A. The facility shall have written criteria for admission which shall include:

1. A description of the population to be served;

2. A description of the types of services offered;

3. Intake and admission procedures;

4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and

5. Description of how educational services will be provided to the population being served.

B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

C. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

D. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission.

22 VAC 42-11-640. Maintenance of Residents' Records.

A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident ~~should~~ shall be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each case record and health record shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement written policies and procedures for management of all records, written and automated, that shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;

2. Facilities using automated records shall address procedures which include:

a. How records are protected from unauthorized access;

b. How records are protected from unauthorized Internet access;

c. How records are protected from loss;

d. How records are protected from unauthorized alteration; and

e. How records are backed up;

3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas which are accessible to authorized staff and protected from unauthorized access, fire, and flood.

1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.

2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

F. Each resident's written case and health records shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.

22 VAC 42-11-650. Interstate Compact on the Placement of Children.

A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia interstate compact has determined the facility is statutorily exempt from the compact's provisions.

B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record.

C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that

the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer.

D. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge.

E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children.

22 VAC 42-11-660. Participation of Residents in Human Research.

The provider shall:

1. Implement a written policy stating that residents will not be used as subjects of human research; or

2. Document approval, as required by the regulatory authorities, for each research project using residents as subjects of human research, unless such research is exempt from review.

22 VAC 42-11-670. Emergency and Self-Admissions.

Providers accepting emergency or self-admissions shall:

1. Develop and implement written policies and procedures governing such admissions which shall include procedures to make and document prompt efforts to obtain (i) a

written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction;

2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and justification of why the resident is to be admitted on an emergency basis; and

3. Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

22 VAC 42-11-680. Application for Admission.

A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission which is designed to compile information necessary to determine:

1. The educational needs of the prospective resident;

2. The mental health, emotional, and psychological needs of the prospective resident;

3. The physical health needs, including the immunization needs, of the prospective resident;

4. The protection needs of the prospective resident;

5. The suitability of the prospective resident's admission;

6. The behavior support needs of the prospective resident; and

7. Information necessary to develop a service plan and a behavior support plan.

C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;

2. The facility's staff are trained to meet the prospective resident's needs; and

3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

22 VAC 42-11-690. Written Placement Agreement.

A. The facility, except a facility which accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement which:

1. Authorizes the resident's placement;

2. Addresses acquisition of and consent for any medical treatment needed by the resident;

3. Addresses the rights and responsibilities of each party involved;

4. Addresses financial responsibility for the placement;

5. Addresses visitation with the resident; and

6. Addresses the education plan for the resident and the responsibilities of all parties.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency, except as permitted for temporary emergency shelters pursuant to § 63.2-1817 of the Code of Virginia.

C. The record of each person admitted based on a court order shall contain a copy of the court order.

22 VAC 42-11-700. Face Sheet.

A. At the time of admission, each resident's record shall include a completed face sheet which contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, ~~and~~ emergency contacts and parents, if appropriate.

B. Information shall be updated when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.

E. At the time of discharge the following information shall be added to the face sheet:

1. Date of discharge;

2. Reason for discharge;

3. Names and addresses of persons to whom the resident was discharged; and

4. Forwarding address of the resident, if known.

22 VAC 42-11-710. Initial Objectives and Strategies.

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities~~, except when a juvenile is confined in post-dispositional detention~~.

22 VAC 42-11-720. Service Plan/Quarterly Reports**.**

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

2. Resident's current level of functioning;

3. Goals, objectives and strategies established for the resident;

4. Projected family involvement;

5. Projected date for accomplishing each objective; and

6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction.

C. The initial service plan shall be reviewed within 60 days of the initial plan and within each 90 day period thereafter and revised as necessary.

D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the service plan which shall include the:

1. Format;

2. Frequency; and

3. Person responsible.

E. There shall be a documented quarterly review of each resident's progress 60 days following the initial service plan and within each 90 day period thereafter and shall report the:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it.

G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report:

1. The resident;

2. The resident's family, if appropriate, and legal guardian~~, or legally authorized representative~~;

3. The placing agency; and

4. Facility staff.

I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff if allowed by federal guidelines and using all procedures as required by federal guidelines.

J. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in post-dispositional detention.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

22 VAC 42-11-730. Resident Transfer Between Residential Facilities Located in Virginia and Operated by the Same Sponsor.

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission;

2. Notification to the family, if appropriate; the resident, the placement agency and the legal guardian;

3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current strengths and needs; and

4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred.

22 VAC 42-11-740. Discharge.

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program which are consistent with the facility's programs and services;

2. Conditions under which a resident may be discharged before completing the program; and

3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. A facility approved to provide residential respite care shall discharge a resident when the legal guardian no longer intends to use the facility's services.

F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate.

G. Unless discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date, each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child placing agency, and resident; and

2. A written discharge plan.

H. Discharge summaries.

1. No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency which made the placement. The discharge summary shall review:

a. Services provided to the resident;

b. The resident's progress toward meeting service plan objectives;

c. The resident's continuing needs and recommendations, if any, for further services and care;

d. Reasons for discharge and names of persons to whom resident was discharged;

e. Dates of admission and discharge; and

f. Date the discharge summary was prepared and the signature of the person preparing it.

2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

22 VAC 42-11-750. Placement of Residents Outside the Facility.

A resident shall not be placed outside the facility prior to the facility's obtaining a child-placing agency license from the Department of Social Services except as permitted by statute or by order of a court of competent jurisdiction.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

22 VAC 42-11-760. Case Management Services.

A. The program of the facility, ~~except a secure detention facility in which juveniles are not confined with a suspended commitment to the Department of Juvenile Justice, including~~ shall be designed to provide case management services. In secure detention this requirement applies only to residents confined in post-dispositional detention. Case managements services ~~which~~ shall address:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care;

3. Utilizing appropriate community resources to provide services and maintain contacts with such resources;

4. Helping the resident strengthen his capacity to function productively in interpersonal relationships;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care.

B. The provision of case management services shall be documented in each resident's record.

22 VAC 42-11-770. Therapy.

Therapy, if provided, shall be provided by an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist, unless exempted from these requirements under the Code of Virginia.

22 VAC 42-11-780. Structured Program of Care.

A. There shall be evidence of a structured program of care designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision; and

3. Meet the objectives of any required service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area and (ii) time of the complaint.

E. The identity of the individual making each entry in the daily ~~activity~~ communication log shall be recorded.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

F. Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for his age and physical condition.

G. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

H. The structured daily routine shall comply with any facility and locally imposed curfews.

22 VAC 42-11-790. Health Care Procedures.

A. The provider shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian;

4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in 22 VAC 42-11-790. B is accessible and up-to-date.

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number;

4. Information concerning;

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems.

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent; and

6. Subsections 3 and 5 do not apply to secure detention facilities except when a resident is confined in post-dispositional detention.

C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.

22 VAC 42-11-800. Medical Examinations and Treatment.

A. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to

admission to the facility or no later than seven days following admission except (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available, and (iii) this requirement does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

B. ~~At the time of placement~~ Within seven days of placement, except for secure detention ~~and emergency placements~~, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. Secure detention ~~and emergency placements~~ shall have completed the screening assessment on each resident within five days of placement.

C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the screening form published by the Virginia Department of Health.

D. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow up care, and (iii)

documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

E. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated;

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

1.The facility is capable of providing care to the child without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to temporary shelters and secure detention facilities.

G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to secure detention facilities, temporary care facilities, and respite care facilities.

H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

I. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable. This subsection does not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice.

J. The provider shall develop and implement written policies and procedures, which include use of ~~universal~~ standard precautions and addresses communicable and

contagious medical conditions. These policies and procedures shall be approved by a medical professional.

K. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

22 VAC 42-11-810. Medication.

A. All medication shall be securely locked and properly labeled.

B. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication.

C. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

D. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

E. Medication prescribed by a person authorized by law shall be administered as prescribed.

F. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

~~6. Actual time administered;~~

~~7~~6. Identity of the individual who administered the medication; and

~~8~~7. Dates the medication was discontinued or changed.

G. In the event of a medication error or an adverse drug reaction, first aid shall be administered, if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented.

H. Medication refusals shall be documented including action taken by staff. ~~The prescribing professional shall be contacted unless the refusal is addressed in standing orders.~~

I. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures

must be approved by a health care professional. The provider shall keep documentation of this approval.

J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs.

K. Syringes and other medical implements used for injecting or cutting skin shall be locked.

22 VAC 42-11-820. Nutrition.

A. Each resident shall be provided a daily diet which (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Menus of actual meals served shall be kept on file for at least six months.

C. Special diets shall be provided when prescribed by a physician and the established religious dietary practices of the resident shall be observed.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day.

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F. Providers shall assure that food is available to residents who ~~wish~~ need to eat breakfast before the 15 hours have expired.

G. Providers shall receive approval from their regulatory authority if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.

22 VAC 42-11-830. Staff Supervision of Residents.

A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the lead regulatory agency for live-in staff.

B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live in staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. There shall be at least one trained child care worker, on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

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F. Supervision Policies.

1. The provider shall develop and implement written policies and procedures which address staff supervision of children including contingency plans for resident illnesses, emergencies, off campus activities, and resident preferences. These policies and procedures shall be based on the:

a. Needs of the population served;

b. Types of services offered;

c. Qualifications of staff on duty; and

d. Number of residents served.

2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake except when the lead regulatory agency has approved or required a supervision plan with a different ratio based on the needs of the population served.

3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the lead regulatory agency which shall include:

a. Why resident care will not be adversely affected and

b. How residents' needs will be met, on an individual as well as group basis.

4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be

supervised by one staff than was approved or required, shall be reviewed and approved by the regulatory authority prior to implementation.

5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

6. The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice.

22 VAC 42-11-840. Emergency Telephone Numbers.

A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.

22 VAC 42-11-850. Searches.

A. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations; or

2. As ordered by a court of competent jurisdiction.

B. A provider that does not conduct pat downs shall have a written policy prohibiting them.

C. A provider that conducts pat downs shall develop and implement written policies and procedures governing them which shall provide that:

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1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;

2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;

3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

22 VAC 42-11-860. Behavior Support.

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include:

1. Identification of positive and problem behavior;

2. Identification of triggers for behaviors;

3. Identification of successful intervention strategies for problem behavior;

4. Techniques for managing anger and anxiety; and

5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation

with the:

1. Resident;

2. Legal guardian;

3. Resident's parents, if applicable;

4. Program director;

5. Placing agency staff; and

6. Other applicable individuals.

C. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

D. This section shall not apply to secure detention and the Reception and Diagnostic Center.

22 VAC 42-11-870. Timeout.

A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

B. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it, except that this subsection does not apply to secure custody facilities.

C. A resident in timeout shall be able to communicate with staff.

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D. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

E. Use of timeout and staff checks on the residents shall be documented.

F. This section does not apply to secure custody facilities.

22 VAC 42-11-880. Prohibitions.

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators, or placing agency representative;

3. Bans on contacts and visits with family or legal guardians except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Delay or withholding of incoming or outgoing mail, except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;

5. Any action which is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

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8. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Office ~~of~~ for Protection and Advocacy.

22 VAC 42-11-890. Pharmacological or Mechanical Restraints.

A. Use of mechanical restraints is prohibited except, as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

B. Use of pharmacological restraints is prohibited.

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22 VAC 42-11-900. Behavioral Interventions.

A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:

1. Define and list techniques that are used and available for use in the order of their relative degree of restrictiveness;

2. Specify the staff members who may authorize the use of each technique; and

3. Specify the processes for implementing such policies and procedures

B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;

2. Placing agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission, except that this requirement does not apply:

a. To secure detention facilities except when a juvenile is confined in post-dispositional detention;

b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and

c. When a state ~~mental~~ psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation and

2. Legal guardians and placing agencies prior to implementation except that this requirement does not apply:

a. To secure detention facilities;

b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and

c. When a state mental hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

D. The provider shall develop and implement written policies and procedures governing use of physical restraint which shall include:

1. The staff position who will write the report and timeframe;

2. The staff position who will review the report and timeframe; and

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

G. Trained staff members may physically restrain a resident only after less restrictive interventions have failed or when failure to restrain would result in harm to the resident or others.

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;

2. Time;

3. Staff involved;

4. Justification for the restraint;

5. Less restrictive interventions which were unsuccessfully attempted prior to using physical restraint;

6. Duration;

7. Description of method or methods of physical restraint techniques used;

8. Signature of the person completing the report and date; and

9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques~~, if applicable, by an individual experienced in training staff in the management of behavior for the population served~~.

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served.

L. Anytime children are present staff must be present who have completed all trainings in behavior intervention.

22 VAC 42-11-910. Seclusion.

Seclusion is allowed only as permitted by other applicable state regulations.

22 VAC 42-11-920. Education.

A. Each resident of compulsory school attendance age shall be enrolled, as provided in the *Code of Virginia*, in an appropriate educational program within five school business days. Documentation of the enrollment ~~process~~ shall be kept in the resident's record.

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B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

D. When a child with ~~disabilities~~ a disability has been placed in a residential facility ~~without the knowledge of school division personnel in the resident's home locality~~, the facility shall contact the division superintendent ~~in that~~ of the resident's home locality ~~in order to effect compliance~~ comply ~~with applicable state and federal requirements relative to the education of children with disabilities~~. Documentation ~~regarding~~ of the contact with the resident's home school ~~locality~~ shall be kept in the resident's record.

E. A provider that has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.

F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time.

22 VAC 42-11-930. Religion.

A. The provider shall have and implement written policies regarding opportunities for residents to participate in religious activities.

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B. The provider's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

22 VAC 42-11-940. Recreation.

A. The provider shall have a written description of its recreation program which describes activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;

2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program except this subdivision does not apply to secure custody facilities;

3. Use of available community recreational resources and facilities except this subdivision does not apply to secure custody facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals

knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water related activities will be provided including ensuring that a certified life guard supervises all swimming activities.

C. For all overnight recreational trips away from the facility the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated;

8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and

10. Documentation of any variations from trip plans and reason ~~and reason~~ for the variation.

D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record.

22 VAC 42-11-950. Community Relationships.

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community, except this ~~section~~ subsection does not apply to secure custody facilities.

B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

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C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the regulatory authority.

22 VAC 42-11-960. Clothing.

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities, except this requirement does not apply to secure custody facilities.

C. Residents shall have the opportunity to participate in the selection of their clothing, except this requirement does not apply to secure custody facilities.

D. Residents shall be allowed to take personal clothing when leaving the facility.

22 VAC 42-11-970. Allowances and Spending Money.

A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money, except this requirement does not apply to secure detention facilities.

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B. There shall be a written policy regarding allowances which shall be made available to legal guardians at the time of admission, except that this requirement does not apply to secure detention facilities.

C. The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

D. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

22 VAC 42-11-980. Work and Employment.

A. Assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the program director with the knowledge and consent of the legal guardian, except this requirement does not apply to secure detention facilities.

D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

22 VAC 42-11-990. Visitation at the Facility and to the Resident's Home.

A. The provider shall have and implement written visitation policies and procedures which allow reasonable visiting privileges and flexible visiting hours, except as permitted by other applicable state regulations.

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B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.

C. In secure detention, except when a juvenile is confined in post-dispositional detention, and temporary care facilities, written visitation policies and procedures shall be provided upon request to parents, legal guardians, residents, and other interested persons important to the residents.

22 VAC 42-11-1000. Resident Visitation at the Homes of Staff.

If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record.

22 VAC 42-11-1010. Vehicles and Power Equipment.

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;

2. Licensure of vehicles;

3. Licensure of drivers; and

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4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules for transportation of residents appropriate to the population served, which shall include taking head counts at each stop~~, which are appropriate to the population served, for transportation of children~~.

C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.

~~22 VAC 42-11-1020. Reports to Court.~~

~~When the provider has received legal custody of a child pursuant to the Code of Virginia, copies of any foster care plans submitted to the court shall be placed in the resident's record.~~

22 VAC 42-11-~~1030~~ 1020. Serious Incident Reports.

A. Any serious incident, accident or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported within 24 hours: (i) to the placing agency, (ii) to either the parent or legal guardian, or both as appropriate and (iii) noted in the resident's record.

B. The provider shall document the following:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and

6. The name of the person to whom the report was made.

C. The provider shall notify the regulatory authority within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the regulatory authority. Such reports shall include:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and

6. The name of the person to whom the report was made.

22 VAC 42-11-~~1040~~1030. Suspected Child Abuse or Neglect.

A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and

2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia.

C. Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately (i) to the regulatory authority and placing agency and (ii) to either the resident's parent or legal guardian, or both, as appropriate.

D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include:

1. The date and time the suspected abuse or neglect occurred;

2. A description of the suspected abuse or neglect;

3. Action taken as a result of the suspected abuse or neglect; and

4. The name of the person to whom the report was made at the local child protective services unit.

22 VAC 42-11-~~1050~~1040. Grievance Procedures.

A. The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable standards, the policies and procedures shall:

1. Be written in clear and simple language;

2. Be communicated to the residents in an age or developmentally appropriate manner;

3. Be posted in an area easily accessible to residents and their parents and legal guardians;

4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and

5. Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.

B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.

22 VAC 42-11-~~1060~~1050. Emergency and Evacuation Procedures.

A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks ~~and~~ (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing

persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors and residents, property protection, community outreach, and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, students, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying family members and legal guardians;

g. Alerting emergency personnel and sounding alarms;

h. Locating and shutting off utilities when necessary;

5. Supporting documents that would be needed in an emergency,

including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees, contractors, ~~students~~ students/interns, and volunteers which shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, non-ambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, and volunteers and incorporated into training for employees, contractors, students and volunteers and orientation of residents to services.

D. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the provider shall take appropriate action to protect the health, safety and welfare of the residents and take appropriate action to remedy the conditions as soon as possible.

E. Employees, contractors, students, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the ~~parent or~~ legal guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the lead regulatory authority as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings;

3. Practice in alerting emergency authorities;

4. Simulated use of emergency equipment; and

5. Practice in securing resident emergency information.

K. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

L. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;

2. Date and time of drill;

3. Amount of time to evacuate the buildings;

4. Specific problems encountered;

5. Staff tasks completed including:

a. Head count, and

b. Practice in notifying emergency authorities; and

~~6. A summary; and~~

~~7~~6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.

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N. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

22 VAC 42-11-~~1070~~1060. Independent living programs

A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the regulatory authority, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/Sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the regulatory agency. The assessment must cover the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/Sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

C. The resident's individualized service plan shall include, in addition to the requirements found in §22 VAC 42-11-630, goals, objectives, and strategies addressing each of the following areas, as applicable:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/Sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation ~~will~~ shall be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures which include:

1. Training for the resident in self administration and recognition of side effects;

2. Method for storage and safekeeping of medication;

3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and

4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in ~~§~~ 22 VAC 42-11-820.A-C.

22 VAC 42-11- ~~1080~~1070. Mother/baby programs

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

1. Responsibilities of mothers regarding the child;

2. Child development including age appropriate behavior for each stage of development;

3. Appropriate behavioral interventions for infants and toddlers;

4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and

5. Safety issues for infants and toddlers.

B. Each direct care worker shall have certification in infant CPR and First Aid prior to working alone with infants or toddlers.

C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed by the legal guardian for each child at the time of admission.

D. In addition to the requirements of 22 VAC 42-11-680.B, the application for admission for the adolescent's child must include:

1. The placement history of the child;

2. The developmental milestones of the child; and

3. The nutritional needs of the child.

E. In addition to the requirements of 22 VAC 42-11-700, the face sheet for the adolescent's child shall also include:

1. Type of delivery;

2. Weight and length at birth;

3. Any medications or allergies; and

4. Name and address, if known, of the biological father.

F. A combined service plan following the requirements of 22 VAC 42-11-720 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.

G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90 day period thereafter.

H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.

J. The provider shall develop and implement written policies and procedures for tracking:

1. What a child 18 months or younger is eating;

2. How much a child 18 months or younger is eating; and

3. The response to newly introduced foods of the child 18 months or younger.

K. The provider shall develop and implement written policies and procedures to record all diaper changes.

L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.

M. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.

N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.

P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities.

Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:

1. Obtaining health care:

2. Ensuring follow-up care is provided;

3. Ensuring adolescent mothers administer to their children only prescription and non-prescription medication authorized by a health care professional licensed to prescribe medication; and

4. Medication administration.

R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, of safe construction, are non-toxic and free of hazards, and meet industry safety standards.

S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.

T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

U. Pillows and filled comforters shall not be used by children under two years of age.

V. Infant walkers shall not be used.

W. Adolescent mothers and their babies may share a bedroom as allowed by 22 VAC 42-11-480.E, but shall not share a room with other adolescents or their children.

X. Pregnant adolescents may share a room as allowed by 22 VAC 42-11-480.

Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from:

22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (Proposed – Draft Revision)

1. Electrocution;

2. Falling down steps or ramps or gaining access to balconies, windows, porches or elevated areas;

3. Poisons, including poisonous plants; and

4. Drowning.

22 VAC 42-11 – ~~1090~~1080. Campsite programs or adventure activities.

A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:

1. Staff training and experience requirements for each activity;

2. Resident training and experience requirements for each activity;

3. Specific staff-to-resident ratio and supervision plan appropriate for each activity~~;~~, including sleeping arrangements and supervision during night time hours;

4. Plans to evaluate and document each participant's physical health throughout the activity;

5. Preparation and planning needed for each activity and time frames;

6. Arrangement, maintenance, and inspection of activity areas;

7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization, and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;

9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which the resident is engaged;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity and respect for self-determination;

13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

14. Review of trip plans by the trip coordinator.

B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.

3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

C. The trip coordinator shall conduct a post trip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

D. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.

E. A trip folder will be developed for each wilderness/adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;

2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;

4. Incident reports;

5. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and

2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

G. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course.

I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability

in one of two classifications: swimmer and non-swimmer. This shall be documented in the resident's record and in the trip folder.

J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and

2. A lifesaving throwing device.

K. A separate bed, bunk or cot shall be made available for each person.

L. A mattress cover shall be provided for each mattress.

M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

N. Bedding shall be clean, dry, sanitary, and in good repair.

O. Bedding shall be adequate to ensure protection and comfort in cold weather.

P. Sleeping bags, if used, shall be fiberfill and rated for 0° F.

Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

R. Each resident shall be provided with an adequate supply of clean clothing which is suitable for outdoor living and is appropriate to the geographic location and season.

S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident.

T. Each resident shall have adequate personal storage area.

U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

V. Artificial lighting shall be provided in a safe manner.

W. All areas of the campsite shall be lighted for safety when occupied by residents.

X. Staff of the same sex may share a sleeping area with the residents.

Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

FORMS

Initial Application For A Virginia State License/Certificate to Operate A Children's Residential Facility, 032-05-5535 (3/2007)

Renewal Application For A Virginia State License/Certificate To Operate A Children's Residential Facility 032-05-5545 (3/2007)

Renewal Application For A Facility Holding A Conditional License/Certificate 032-05-588 (3/2007)

Board of Education Agenda Item

Item: C. **Date:** September 26, 2007

Topic: Final Review of a Request for Increased Graduation Requirements from Russell County Public Schools

Presenter: Ms. Anne Wescott, Assistant Superintendent for Policy and Communications

Telephone Number: (804) 225-2403 E-Mail Address: **Anne.Wescott@doe.virginia.gov**

Origin:

___ Topic presented for information only (no board action required)

_X_ Board review required by
- ___ State or federal law or regulation
- _X_ Board of Education regulation
- ___ Other: _____

_X_ Action requested at this meeting ___ Action requested at future meeting: _____

Previous Review/Action:

____ No previous board review/action

_X_ Previous review/action
date July 25, 2007 – First review

Background Information:

The Standards of Quality (SOQ), in § 22.1-253.13:4 of the *Code of Virginia,* require local school boards to "…award diplomas to all secondary school students, including students who transfer from nonpublic schools or from home instruction, who earn the units of credit prescribed by the Board of Education, pass the prescribed tests, and meet such other requirements as may be prescribed by the local school board and approved by the Board of Education."

Standard 8 VAC 20-131-50 of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (Standards of Accreditation) addresses graduation requirements. The regulation says, in part: "The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school…. The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the Board of Education. All additional requirements prescribed by local school boards that have been approved by the Board of Education, remain in effect until such time as the local school board submits a request to amend or discontinue them…."

The Board's *Guidance Document Governing Certain Provisions of the Regulations Establishing Standards of Accrediting Public Schools in Virginia,* adopted by the Board on October 26, 2006, gives school divisions guidance in prescribing additional credit requirements for the Standard and Advanced Studies diplomas. The guidance document says, in part:

> **Standard Diploma:** Generally, the Board will approve requests from local school divisions to require up to two additional local credits to obtain the Standard Diploma, up to a maximum of 24 required credits. Generally, the Board will approve local requests for additional graduation credit requirements in the core discipline areas of the Standards of Learning (English, mathematics, science or history/social science)…. Requests for additional local credits in disciplines outside the core discipline areas will be considered on a case-by-case basis.
>
> **Advanced Studies Diploma:** Generally, the Board will approve requests from local school divisions for local additional credits required for the Advanced Studies Diploma above the 24 contained in the standards if the credits are in the discipline areas of English, mathematics, science, history/social studies, fine arts (including performing arts), career and technical education, or foreign language. The Board will consider credits outside these disciplines on a case-by-case basis.
>
> **Transfer Students:** Any local school division receiving approval to increase its course credit requirements may not deny either the Standard or Advanced Studies Diploma to any transfer student who has otherwise met the requirements contained in the standards, if the transfer student can only meet the division's requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he or she otherwise would have graduated.
>
> **Prospective Application / Advance Notice:** A local school division's additional credit requirements should apply only to students who have not yet entered ninth grade at the time the additional credits are approved.
>
> **Allocation of Electives:** Generally, the Board will approve requests from local school divisions to allocate elective credits for local prescribed course requirements, while reducing the number of electives by an equal amount so that the total number of graduation credit requirements remains unchanged….

Summary of Major Elements:

Russell County Public Schools is requesting approval to require students to complete two additional courses to earn a Standard or an Advanced Studies Diploma. This would increase the number of electives from six to eight for the Standard Diploma, and from two to four for the Advanced Studies Diploma. The proposed change would become effective for students entering the ninth grade for the first time in the 2008-2009 school year, as specified in both the Standards of Accreditation and the Board's guidance document.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board approve the request from Russell County Public Schools.

Impact on Resources: There is no impact on resources at the Department of Education.

Timetable for Further Review/Action: Upon approval of the request, Department of Education staff will notify Russell County Public Schools of the Board's action.

Standard Diploma

	Verified Credit Requirements	Standard Credit Current Requirements	Standard Credit Proposed Requirements
English	2	4	4
Mathematics[1]	1	3	3
Laboratory Science[2, 6]	1	3	3
History and Social Sciences[3, 6]	1	3	3
Health and Physical Education		2	2
Fine Arts or Career and Technical Education		1	1
Electives[4]		**6**	**8**
Student Selected Test[5]	1		
Total	**6**	**22**	**24**

1. Courses completed to satisfy this requirement shall be at or above the level of algebra and shall include at least two course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of algebra and geometry. The Board may approve additional courses to satisfy this requirement.

2. Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics. The Board may approve additional courses to satisfy this requirement.

3. Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The Board may approve additional courses to satisfy this requirement.

4. Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

5. A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education or other areas as prescribed by the Board in 8 VAC 20-131-110.

6. Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the Board of Education as an additional test to verify student achievement.

Advanced Studies Diploma

	Verified Credit Requirements	Standard Credit Current Requirements	Standard Credit Proposed Requirements
English	2	4	4
Mathematics[1]	2	4	4
Laboratory Science[2]	2	4	4
History and Social Sciences[3]	2	4	4
Foreign Language[4]		3	3
Health and Physical Education		2	2
Fine Arts or CTE		1	1
Electives		**2**	**4**
Student Selected[5]	1		
Total	**9**	**24**	**26**

1. Courses completed to satisfy this requirement shall be at or above the level of algebra and shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The Board may approve additional courses to satisfy this requirement.

2. Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board may approve additional courses to satisfy this requirement.

3. Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The Board may approve additional courses to satisfy this requirement.

4. Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

5. A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education or other areas as prescribed by the board in 8 VAC 20-131-110.

Board of Education Agenda Item

Item: D. **Date:** September 26, 2007

Topic: First Review of Request for an Alternative Accreditation Plan from Danville Public Schools for J. M. Langston Focus School

Presenter: Mrs. Kathleen M. Smith, Director, Office of School Improvement. Division of Student Assessment and School Improvement
Dr. Sue B. Davis, Superintendent, Danville City Public Schools
Mr. Andrew Tyrrell, Assistant Superintendent for Instruction, Danville City Public Schools

Telephone Number: (804) 225-2865 **E-Mail Address:** Kathleen.Smith@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
____ State or federal law or regulation
_X_ Board of Education regulation
____ Other: _____

____ Action requested at this meeting _X_ Action requested at future meeting: Final Review at Future Meeting

Previous Review/Action:

_X_ No previous board review/action

____ Previous review/action
date _____
action _____

Background Information:

The *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, Section 8 VAC 20-131.280.C. states:

> Subject to the provisions of 8 VAC 20-131-330, the governing school board of special purpose schools such as those provided for in §22.1-26 of the Code, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the Board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Advanced Studies, or Modified Standard Diploma must meet the requirements prescribed in 8 VAC 20-131-50.

Section 22.1-253.13:1.D.8 of the *Standards of Quality* requires local school boards to provide educational alternatives for students whose needs are not met in programs prescribed elsewhere in these standards. Such students shall be counted in average daily membership (ADM) in accordance with the regulations of the Board of Education. Regulations governing programs such as this are found in the accrediting standards, which permit alternative accreditation plans and allow the Board to grant waivers to certain provisions of the standards.

Summary of Major Elements

J. M. Langston Focus School is a newly created alternative school in the Danville Public School System designed to foster a learning environment for middle school and secondary students who have experienced academic and behavior difficulties in a traditional education environment. This school will prepare students in grades 6, 7, and 8 who are experiencing significant academic and behavior difficulties in a traditional education setting to successfully complete middle grade content with the goal of promotion to high school. In addition, this school will prepare students in grades 9, 10, 11, and 12 who are experiencing significant academic and behavior difficulties in a traditional education setting to successfully complete secondary grade content and earn a standard diploma.

J. M. Langston Focus School serves students in grades 6 – 8 and 9 – 12 who are two or more years behind their age appropriate peers and are deficient in reading and mathematics as measured by the Kaufman Test of Educational Achievement (KTEA) and/or who continuously experience behavior deficits that are outlined in the Danville school board's *Student Standards of Conduct*.

The instructional program at J. M. Langston Focus School in grades 6-8 focuses on reading, writing and mathematics. Students receive instruction in organization and study skills as well as in goal setting and problem-solving strategies. Interdisciplinary instruction addresses the history/social science and science content that is necessary for students to be successful in 9th grade entry level classes. In grades 9-12 the academic program focuses on the four core subject areas: English, mathematics, history /social science, and science. Students receive instruction and guidance in goal setting, career awareness, and post-secondary education. Credit recovery programs are provided to students in grades 9-12 using on-site technology and after-school programs.

Career exploration opportunities using internet resources will be offered to students in grades 6-12. Students will take aptitude and interest inventories to be used in planning academic and vocational choices.

J. M. Langston Focus School is staffed with a faculty of highly qualified teachers certified to teach the core subject areas proposed. Grades 6-12 teacher/pupil ratio will be limited to 1:15 per class. Paraprofessionals will be assigned to the school to serve as instructional assistants. Pupil support services will be on-site to assist students in grades 6-12 and their families with issues that serve as barriers to academic and behavior successes.

Grades 6-12 students will participate in grade level SOL tests and end-of-course tests. Student performance for accreditation will be determined based on the percent of students passing the following SOL tests: grades 6-7 reading, mathematics, and content specific history; grade 8 reading, mathematics, content specific history, and science; and SOL end-of-course tests. Scores of students in attendance for less than two semesters, including the semester in which the SOL testing takes place, will be considered

transfer students for the purposes of calculating the state accreditation ratings. Scores of students in attendance for two semesters or more, including the semester in which the testing takes place, will be included in the accreditation calculation.

A *SOL Alternative Accreditation Index* will be used to determine the accreditation ratings in reading, mathematics, science, and history and social science. The index includes points assigned for student performance on each of the SOL tests. The alternative accreditation will be calculated by multiplying the number of grades 6-12 students who receive an advance proficiency score by 100; the number of grades 6-12 students receiving a proficiency score by 90; the number of grades 6-12 students who receive a basic score by 70; and the number of students who receive a fail score by 0. The total points awarded will be divided by the total number of students tested as indicated below:

ALTERNATE ACCREDITATION INDEX POINT SYSTEM

Number of Students Tested	*SOL Scaled Score*	*SOL Proficiency Level*	*Points Awarded for each Proficiency Level*	*Points Awarded*
	600-500	Advanced	100	
	499-400	Proficient	90	
	399-375	Basic	70	
	Below 375	Fail	0	
(A)Total Number of Points Awarded				
(B)Total Number of Grades 6-12 Students Tested				
Alternative Accreditation Index Score = (A)/(B)				

An Alternative Accreditation Index Score of at least 70 points must be earned in each of the four core subjects (English, mathematics, science, and history /social science) to meet fully accredited status.

Due to the time required to address the academic needs of students in the four core subject areas, foreign language and fine arts will not be offered to students in grades 6-12. Therefore, the J. M. Langston Focus School is requesting waivers from 8 VAC 20-131-90 A-C and 8 VAC 20-131-100 A-B:

8 VAC 20-131-90. Instructional program in middle schools

A. The middle school shall provide each student a program of instruction, which corresponds, to the Standards of Learning for English, mathematics, science, and history/social science. In addition, each school shall provide instruction in art, music, foreign language, physical education and health, and career and technical exploration.

B. The middle school shall provide a minimum of eight courses to students in the eighth grade. Courses in English, mathematics, science, and history/social science shall be required. Four elective courses shall be available: level one of a foreign language, one in health and physical education, one in fine arts, and one in career and technical exploration.

C. Level one of a foreign language shall be available to all eighth-grade students. For any high school credit-bearing course taken in middle school, parents may request that grades be omitted from the student's transcript and the student not earn high school credit for the course in accordance with policies adopted by the local school board. Notice of this provision must be provided to parents

with a deadline and format for making such a request. Nothing in this chapter shall be construed to prevent a middle school from offering any other credit-bearing courses for graduation.

8 VAC 20-131-100. Instructional program in secondary schools

A. The secondary school shall provide each student a program of instruction in the academic areas of English, mathematics, science, and history/social science that enables each student to meet the graduation requirements described in 8 VAC 20-131-50 and shall offer opportunities for students to pursue a program of studies in foreign languages, fine arts, and career and technical areas including:

1. Career and technical education choices that prepare the student as a career and technical education program completer in one of three or more occupational areas and that prepare the student for technical or preprofessional postsecondary programs;

2. Coursework and experiences that prepare the student for college-level studies including access to at least three Advanced Placement (AP) courses, college-level courses for degree credit, International Baccalaureate (IB) courses, Cambridge courses, or any combination thereof;

3. Preparation for college admissions tests; and

4. Opportunities to study and explore the fine arts and foreign languages.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in 8 VAC 20-131-50 and must include:

English	4	
Mathematics	4	
Science (Laboratory)	4	
History and Social Sciences	4	
Foreign Language		3
Electives	4	
Career and Technical Education	11	
Fine Arts	2	
Health and Physical Education	2	
Total Units	38	

Superintendent's Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education accept for first review the alternative accreditation plan from Danville City Schools for J. M. Langston Focus School.

Impact on Resources:
None

Timetable for Further Review/Action:
Final action will be requested at a future meeting.

SA.0201 8/04

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION
RICHMOND, VIRGINIA

REQUEST FOR APPROVAL OF AN ALTERNATIVE ACCREDITATION PLAN

Regulations Establishing Standards for Accrediting Public Schools in Virginia, (8 VAC 20-131-10 et. seq.) set the minimum standards public schools must meet to be accredited by the Board of Education. Accreditation of public schools is required by the Standards of Quality (22.1-253.13:1 et. seq.). The annual accrediting cycle for public schools is July 1 through June 30. This cover sheet, with the supporting documentation, must be submitted to the Department of Education for review and recommendation to the Board at least 90 days prior to August 1 of the school year in which the plan is to be implemented.

8 VAC 20-131-280 of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* states (in part): *Special purpose schools such as regional, special education, alternative, or career and technical schools that serve as the student's school of principal enrollment shall be evaluated on standards appropriate to the programs offered in the school and approved by the Board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Advanced Studies, or Modified Standard Diploma must meet the requirements prescribed in 8 VAC 20-131-50.*

The Board of Education, in its *Guidelines Governing the Implementation of Certain Provisions of the Regulations Establishing Standards for Accrediting Public Schools in Virginia*, states:

Schools described in this section are those that serve as a student's school of principal enrollment and where students are reported in fall membership for the school. Fall membership determines whether or not these schools are subject to the provisions of the accrediting standards; therefore, schools reporting fall membership are subject to the provisions of the standards. These schools may or may not administer Standards of Learning (SOL) tests.

In accordance with the provisions of 8 VAC 20-131-330 of the standards, local school boards may seek waivers of provisions of the standards to address the unique needs of these special purpose schools. Such requests may include an alternative accreditation plan. Applications must be submitted to the Board for consideration at least ninety days prior to August 1 of the school year. Requests for consideration must be accompanied by information that documents the need for approval of the request.

We, the undersigned, submit this request for review and approval by the Board of Education and understand that we are expected to appear before the Board to discuss the program and respond to questions raised.

September 6, 2007
Date Approved
by the Local School Board

George M. Wilson
Signature
Chairman of the School Board

September 11, 2007
Submission Date

Sue B. Davis
Signature
Division Superintendent

Revised 8/25/04

DANVILLE PUBLIC SCHOOLS
J. M. LANGSTON FOCUS SCHOOL
DANVILLE, VIRGINIA

REQUEST FOR APPROVAL OF AN ALTERNATIVE ACCREDITATION PLAN

INTRODUCTION:

J. M. Langston Focus School is a newly created alternative school in the Danville Public School System. Langston meets the state definition of a special purpose school and seeks approval for an alternative accreditation plan as provided in the Regulations Establishing Standards for Accrediting Public Schools in Virginia, Part VIII, Section 8 VAC 20-131-280 D.

INTENT:

To prepare students in grades 6, 7, and 8 who are experiencing significant academic and behavior difficulties in a traditional education setting to successfully complete middle grade content with the goal of promotion to high school. To prepare students in grades 9, 10, 11, and 12 who are experiencing significant academic and behavior difficulties in a traditional education setting to successfully complete secondary grade content and earn a standard diploma.

VISION/MISSION:

J. M. Langston Focus School is designed to foster a learning environment for middle and secondary grade students who have experienced academic and behavior difficulties in a traditional education environment.

TARGET POPULATION:

J. M. Langston Focus School serves students in grades 6 – 8 and 9 – 12 who are overage and/or under credited, and are deficient in reading and math as measured by the Kaufman Test of Educational Achievement (KTEA) and/or who continuously experience behavior deficits that are outlined in the school board's *Student Standards of Conduct*.

INSTRUCTIONAL PROGRAM:

- Grades 6-8 academic program will focus on reading, writing and mathematics. Students will receive instruction in organization and study skills as well as goal setting and problem-solving strategies. Interdisciplinary instruction will address the history and science content that is necessary for students to be successful in 9th grade entry level classes. Grades 9-12 academic program will focus on the four core subject areas English, mathematics, history and social science, and science. Students will receive instruction and guidance in goal setting, career awareness, and post-secondary education.
- Students will be administered the KTEA assessment in reading and mathematics prior to entering the program to assist teachers with the development of a differentiated instructional program that addresses the needs of each student.
- Grades 6-12 students will have opportunities for career exploration offered using internet resources. Students will take aptitude and interest inventories to be used in planning academic and vocational choices.
- Credit recovery programs will be provided to students in grades 9-12 using on-site technology and after-school programs.
- Students will be given additional time to master specific course objectives; particularly, courses that have an EOC/SOL test. This decision will be based on students' six weeks benchmark

assessment scores, and/or social, and/or environmental issues. Students needing additional time will take the EOC/SOL test during the next SOL test administration.

- A 30-minute lunch and recess will allow students time to eat and engage in physical activities.

STAFFING:
J. M. Langston Focus School is staffed with a faculty of highly qualified teachers certified to teach the core subject areas proposed. Grades 6-12 teacher/pupil ratio will be limited to 1:15 per class. Paraprofessionals will be assigned to the school to serve as instructional assistants. Pupil support services will be on-site to assist students in grades 6-12 and their families with issues that serve as barriers to academic and behavior successes.

STUDENT ASSESSMENT AND EVALUATION:
The KTEA will be administered to each student in reading and mathematics prior to program entry. The results will be used as entry baseline data for each student and to assistance in instructional planning. Students will be administered benchmark assessments each six weeks in the core subject areas, with the achievement data tracked and analyzed. Grades 6-12 students will participate in the Virginia Standards of Learning Assessment Program.

WAIVER REQUESTED:
Due to the time required to address the academic needs of students in the four core subject areas, foreign language and fine arts will not be offered to students in grades 6-12. Therefore, the J. M. Langston Focus School is requesting waivers from 8 VAC 20-131-90 A., 8 VAC 20-131-90 B., 8 VAC 20-131-90 C., 8 VAC 20-131-100 A., and 8 VAC 20-131-100 B. of the Standards of Accreditation that require foreign language and fine arts.

ACCREDITATION:
Grades 6-12 students will participate in grade level SOL tests and end-of-course tests. Student performance for accreditation will be determined based on the percent of students passing the following SOL tests: grades 6-7 reading, mathematics, and content specific history; grade 8 English, mathematics, content specific history, and science; and SOL end-of-course tests. Scores of students in attendance for less than two semesters, including the semester in which the SOL testing takes place, will be considered transfer students for the purposes of calculating the state accreditation ratings. Scores of students in attendance for two semesters or more, including the semester in which the testing takes place, will be included in the accreditation calculation. Due to the small student population, a composite pass rate is necessary to create a larger number of student scores upon which to calculate state accreditation. The accreditation ratings are: grades 6-12 English-70%; mathematics-70%; history and social science-70%; and science-70%.

A *SOL Alternative Accreditation Index* will be used to determine the accreditation ratings in English, mathematics, science, and history and social science. The index includes points assigned for student performance on each of the SOL tests. The alternative accreditation will be calculated by multiplying the number of grades 6-12 students who receive an advance proficiency score by 100; the number of grades 6-12 students receiving a proficiency score by 90; the number of grades 6-12 students who receive a basic score by 70; and the number of students who receive a fail score by 0. The total points awarded will be divided by the total number of students tested. (See Table 1.)

Table 1

ALTERNATE ACCREDITATION INDEX POINT SYSTEM

Number of Students Tested	***SOL Scaled Score***	***SOL Proficiency Level***	***Points Awarded for each Proficiency Level***	***Points Awarded***
	600-500	**Advanced**	**100**	
	499-400	**Proficient**	**90**	
	399-375	**Basic**	**70**	
	Below 375	**Fail**	**0**	
(A)Total Number of Points Awarded				
(B)Total Number of Grades 6-12 Students Tested				
Alternative Accreditation Index Score = (A)/(B)				

An Alternative Accreditation Index Score of at least 70 points must be earned in each of the four core subjects (English, mathematics, science, and history and social science) to meet fully accredited status.

PROGRAM EVALUATION:
The effectiveness of the program will be evaluated using several criteria. Student achievement will be monitored using report card grades, six weeks benchmark assessments, and spring SOL test results. Student attendance and behavior will be monitored weekly by using the StarBase student management system to track attendance and violations of the *Student Standards of Conduct*. Mid-year and end-of-the-year surveys will be distributed to students and parents to gather data for school improvement.

TRANSITION PLAN:
Students and their parents will be interviewed face-to-face by the director of Alternative Education, and the principal, guidance counselor, and curriculum facilitator of Langston School. The purposes of this interview are: (1) to explain the academic and behavior expectations of students entering J. M. Langston Focus School; and (2) to explain the different support services available to students and parents of J. M. Langston Focus School.

Attachment B

Virginia Department of Education
Evaluation Criteria
J. M. Langston Focus School, Danville Public Schools
Alternative Accreditation Plans for Special Purpose Schools

Criteria	Yes	No	Limited
School characteristics and instructional program:			
1. The mission, purpose, and target population of the school justify its categorization as a "special purpose" school and, therefore, eligible to request an alternative accreditation plan.	√		
2. The characteristics and special needs of the student population are clearly defined, and the criteria for student placement require parental consultation and agreement.	√		
3. The program of instruction provides all students with opportunities to study a comprehensive curriculum that is customized to support the mission of the school. *The plan requests a waiver of 8 VAC 20-131-90 A-C and .8 VAC 20-131-100 A-B.*			√
4. The school provides transition planning to help students be successful when they return to a regular school setting.	√		
5. Strategies used to evaluate student progress are aligned to the mission/purpose of the school and include academic achievement measures.	√		
6. Convincing evidence has been provided that students enrolled in the school have not been successful in other schools subject to all the accrediting standards.	√		
7. Students will be taught with highly qualified teachers who meet the Board of Education's licensure requirements for instructional personnel.	√		

Alternative Accreditation Accountability Criteria:			
1. Rationale and documentation provide convincing evidence that the "special purpose" nature of the school precludes its being able to reach and maintain full accreditation status as defined in the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (SOA). *Bonus points need to reflect the mission of the school.*			√
2. Alternative accreditation criteria described in the plan include academic achievement measures that are objective, measurable, and directly related to the mission and purpose of the school.	√		
3. The plan includes use of statewide assessment student achievement results of English and mathematics.	√		
4. The plan meets the testing requirements of the SOA.	√		
5. The plan meets the testing requirements of NCLB and describes how the school plans to meet "adequate yearly progress" requirements of the federal law. *The plan does not specifically state that students will be tested as required by NCLB.*			√
6. The plan provides convincing evidence that all pre-accreditation eligibility criteria are met for standards in which waivers have not been requested.	√		
7. Waivers have been requested for accrediting standards that are not being met, and the rationale for the waivers are clear and appropriate for the mission/purpose of the school.	√		

Board of Education Agenda Item

Item: E. **Date:** September 26, 2007

Topic: First Review of Requests from Nineteen School Divisions for Ratings of Conditionally Accredited

Presenter: Mrs. Kathleen M. Smith, Director, Office of School Improvement, Division of Student Assessment and School Improvement

Telephone Number: (804) 225-2865 **E-Mail Address:** Kathleen.Smith@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
- ____ State or federal law or regulation
- _X_ Board of Education regulation
- ____ Other: _____

_X_ Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

_X_ No previous board review/action

____ Previous review/action
date _____
action _____

Background Information:

8 VAC 20-131-300.C states that a school shall be rated Accreditation Denied based on its academic performance during academic years ending in 2006 and beyond, if it fails to meet the requirements to be rated Fully Accredited, for the preceding three consecutive years or for three consecutive years anytime thereafter.

As outlined in 8 VAC 20-131-315, as an alternative to the memorandum of understanding required for schools rated Accreditation Denied, a local school board may choose to reconstitute the school and apply to the Board of Education for a rating of Conditionally Accredited. The application shall outline specific responses that address all areas of deficiency that resulted in the Accreditation Denied status.

As defined by the Standards of Accreditation, “reconstitution” means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied. Actions may include, but not be limited to, restructuring a school’s governance, instructional program, staff or student population.

Last year, fifty-six schools were warned for three or more consecutive years. As indicated by preliminary accreditation data, twenty of those schools will be rated as Fully Accredited, two will be rated Accreditation Denied and four will remain rated as Accreditation Denied for the second consecutive year. Twenty-eight schools from nineteen divisions are requesting a rating of Conditionally Accredited from the Virginia Board of Education for the first year. Two additional schools are requesting a conditional for the second consecutive year. A history of the schools requesting a rating of Conditionally Accredited for the first year follows:

Division	School Name	Subjects Warned in 2005	Subjects Warned in 2006	Preliminary Data Indicates Subjects Warned in 2007
Alexandria City	Jefferson-Houston Elementary School	Mathematics, History, Science	English, Mathematics	English, Mathematics
Caroline County	Caroline Middle School	English, History	Mathematics, History	Mathematics, History
Charles City County	Charles City County Middle School	English, History	Mathematics, History	Mathematics
Dinwiddie County	Dinwiddie County Middle School	English	Mathematics	Mathematics
Essex County	Essex Intermediate	English	Mathematics	History
Grayson County	Baywood Elementary School	English	History	English
Grayson County	Mt. Rogers Combined School	English	Mathematics	Mathematics
Grayson County	Providence Elementary School	English	English, History	Mathematics
Hampton City	Hampton Harbour Academy	English, Mathematics, History, Science	Mathematics	Alternative Plan
Hampton City	C. Vernon Spratley Middle School	English	Mathematics	Mathematics, History
Hampton City	Francis Mallory Elementary School	Science	Science	Mathematics
Henrico County	L. Douglas Wilder Middle School	English	Mathematics	Mathematics
Henrico County	New Bridge	English	English, Mathematics	Alternative Plan
Newport News City	Huntington Middle School	English	English	Mathematics, History
Norfolk City	Lake Taylor Middle School	English	Mathematics	Mathematics
Portsmouth City	Cradock Middle	English, Mathematics, Science	English, Mathematics, History, Science	English, Mathematics, Science
Prince Edward County	Prince Edward Middle	English, Science	Mathematics, Science, History	Mathematics
Pulaski County	Pulaski Middle School	English	Mathematics	Mathematics
Richmond City	Chandler Middle School	English	English, Mathematics, History	English, Mathematics, History
Richmond City	Thomas C. Boushall Middle School	English	English, Mathematics, History	English, Mathematics, History
Roanoke City	Lucy Addison Middle School	English	Mathematics	Mathematics, History
Roanoke City	Forest Park Elementary School	English, Mathematics, History, Science	English, Mathematics, History	English
Roanoke City	Stonewall Jackson Middle School	English	Mathematics, History	History

Rockbridge County	Maury River Middle School	English	Mathematics	Mathematics
Surry County	Luther P. Jackson Middle School	NA	History	History
Sussex County	Sussex Central Middle School	English, Mathematics, Science	English, Mathematics	Mathematics
Tazewell County	Richlands Middle School	English	Mathematics	Mathematics
Tazewell County	Tazewell Middle School	English	Mathematics	Mathematics

Summary of Major Elements

Of the nineteen divisions requesting a rating of Conditionally Accredited, fifteen divisions have indicated that reconstitution efforts have changed the governance in twenty-two schools. Three divisions have reconstituted four schools by significantly changing staff. One division has reconstituted a school by changing the student population, and another has reconstituted a school by changing the instructional program. The chart below summarizes the primary and the additional justification provided by each of the nineteen school divisions for reconstitution efforts for the twenty-eight schools.

School Division	School Name	Governance	Staff	Student Population	Instructional Program
Alexandria City	Jefferson-Houston Elementary	Primary	Additional		
Caroline County	Caroline Middle	Primary	Additional		
Charles City County	Charles City Co. Middle	Primary	Additional		
Dinwiddie County	Dinwiddie County Middle	Primary	Additional		
Essex County	Essex Int.	Primary	Additional		
Grayson County	Baywood Elementary		Primary	Additional	Additional
Grayson County	Mt. Rogers Comb.		Primary	Additional	
Grayson County	Providence Elementary		Additional	Primary	
Hampton City	C. Vernon Spratley Middle	Primary	Additional		
Hampton City	Francis Mallory Elementary	Primary	Additional		
Hampton City	Hampton Harbour Academy	Primary			Continued alternative accreditation plan
Henrico County	L. Douglas Wilder Middle	Primary	Additional		
Henrico County	New Bridge School	Primary	Additional		Continued alternative accreditation plan
Newport News City	Huntington Middle	Primary	Additional		
Norfolk City	Lake Taylor Middle	Additional	Primary		
Portsmouth City	Cradock Middle	Primary	Additional		
Prince Edward County	Prince Edward Middle	Primary	Additional		
Pulaski County	Pulaski Middle	Primary	Additional		
Richmond City	Chandler Middle	Primary	Additional		
Richmond City	Thomas C. Boushall Middle	Primary	Additional		
Roanoke City	Lucy Addison Middle	Primary	Additional		
Roanoke City	Forest Park Elementary	Primary	Additional		
Roanoke City	Stonewall Jackson Middle	Primary	Additional		
Rockbridge County	Maury River Middle	Primary	Additional		

Surry County	Luther P. Jackson Middle		Additional		Primary
Sussex County	Sussex Central Middle		Primary		Additional
Tazewell County	Richlands Middle	Primary			
Tazewell County	Tazewell Middle	Primary			

For the twenty-eight schools requesting a rating of Conditionally Accredited, mathematics is one of the areas of warning in twenty-three of the schools. Additionally, eighteen of the schools are only warned in one area. Two are alternative schools with an approved alternative accreditation plan from the Board of Education. Other summary descriptors for these twenty-eight schools include:

Description of Warning	Number of Schools
Warned in only mathematics	13
Warned in only English	2
Warned in only social studies	3
Warned in only science	0
Warned in English and Math (could include other subjects as well)	3
Warned in two subjects	5
Warned in three or more subjects	3
Alternative schools	2

Seventeen of the schools house 6th or 7th grade and continue to be warned in mathematics. Pass rates have demonstrated some improvement as indicated below:

School Division	School Name	Change in Percent Passing Mathematics in 2007 from 2006 (Example: 5 would indicated a pass rate change from 50% to 55%)	
		6th Grade	7th Grade
Caroline County	Caroline Middle	12	-24
Charles City County	Charles City Co. Middle	3	35
Dinwiddie County	Dinwiddie County Middle	9	4
Hampton City	C. Vernon Spratley Middle	22	23
Henrico County	L. Douglas Wilder Middle	22	18
Newport News City	Huntington Middle	16	46
Norfolk City	Lake Taylor Middle	8	27
Portsmouth City	Cradock Middle	No 6th grade	20
Prince Edward County	Prince Edward Middle	17	25
Pulaski County	Pulaski Middle	7	48
Richmond City	Chandler Middle	15	40
Richmond City	Thomas C. Boushall Middle	-11	32
Roanoke City	Lucy Addison Middle	15	50
Rockbridge County	Maury River Middle	5	37
Sussex County	Sussex Central Middle	12	46
Tazewell County	Richlands Middle	28	53
Tazewell County	Tazewell Middle	22	50

Change in Governance

Fifteen divisions have indicated that reconstitution efforts resulted in a change of the governance in twenty-two schools.

The Office of School Improvement has worked closely with these schools to design and implement an oversight committee as a formal mechanism to focus on and improve instruction in the area(s) of warning. These oversight committees share the governance of instruction in the area(s) of warning. The purpose of the oversight or shared governance committee is to:

1. Serve as a formal mechanism to guide instructional decisions based on data including, but not limited to, formative assessment data, classroom observations and review of lesson plans.
2. Frequently monitor and adjust the school's improvement plan.
3. Provide outside expertise and knowledge in the content area of warning and/or in research-based instructional practices that foster improved student achievement.
4. Align district resources with the needs of the school, including additional help and support from the central office.
5. Share the governance in the instructional area(s) of warning through a formal decision-making process. In these committees, the principal is not the sole instructional decision-maker.

The following table indicates the composition of the committees for each school indicated in the letters requesting ratings of Conditionally Accredited:

School Division	School Name	Outside expertise in area of warning	District curriculum or instructional leader	Principal	Teacher	Outside monitor or facilitator (PASS, ARC*, or University)
Alexandria City	Jefferson-Houston Elementary	✔	✔	✔	✔	Agreed to ARC
Caroline County	Caroline Middle	✔	✔	✔	✔	Agreed to ARC
Charles City County	Charles City Co. Middle	✔	✔	✔	✔	PASS University
Dinwiddie County	Dinwiddie County Middle	✔	✔	✔	✔	
Essex County	Essex Int.	✔	✔	✔	✔	PASS
Hampton City	C. Vernon Spratley Middle	✔	✔	✔	✔	PASS
Hampton City	Francis Mallory Elementary	✔	✔	✔	✔	
Hampton City	Hampton Harbour Academy	✔	✔	✔	✔	
Henrico County	L. Douglas Wilder Middle	✔	✔	✔	✔	ARC
Henrico County	New Bridge School	✔	✔	✔	✔	ARC
Newport News City	Huntington Middle	✔	✔	✔	✔	
Portsmouth City	Cradock Middle	✔	✔	✔	✔	PASS
Prince Edward County	Prince Edward Middle	✔	✔	✔	✔	Continue PASS
Pulaski County	Pulaski Middle	✔	✔	✔	✔	
Richmond City	Chandler Middle	✔	✔	✔	✔	Continue PASS

Richmond City	Thomas C. Boushall Middle	✔	✔	✔	✔	Continue PASS
Roanoke City	Lucy Addison Middle	✔	✔	✔	✔	ARC
Roanoke City	Forest Park Elementary	✔	✔	✔	✔	PASS
Roanoke City	Stonewall Jackson Middle	✔	✔	✔	✔	ARC
Rockbridge County	Maury River Middle	✔	✔	✔	✔	
Tazewell County	Richlands Middle	✔	✔	✔	✔	PASS University
Tazewell County	Tazewell Middle	✔	✔	✔	✔	PASS University

ARC- Academic Review Coordinator or Team Leader

The following schools included parents on the shared governance committees:

Division	School
Alexandria City	Jefferson-Houston Elementary
Charles City County	Charles City County Middle
Dinwiddie County	Dinwiddie County Middle
Essex County	Essex Intermediate
Hampton City	C. Vernon Spratley Middle
Hampton City	Francis Mallory Elementary
Hampton City	Hampton Harbour Academy
Portsmouth City	Cradock Middle
Prince Edward County	Prince Edward Middle
Roanoke City	Lucy Addison Middle
Roanoke City	Forest Park Elementary
Roanoke City	Stonewall Jackson Middle
Rockbridge County	Maury River Middle School
Tazewell County	Richlands Middle
Tazewell County	Tazewell Middle

The following table provides an overview of the alternate governance efforts presented in the letters requesting ratings of Conditionally Accredited:

Division	School Name	Overview of Request
Alexandria City	Jefferson-Houston Elementary School	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee monitors curriculum and pacing and meets at least monthly. Decision-making is by consensus with superintendent breaking any ties in decision-making. The committee provides staff development as well. A report to staff and parents is provided quarterly. Administrative leaders were replaced last school year.
Caroline County	Caroline Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. Staff changes were made this year and last year.

Division	School Name	Overview of Request
Charles City County	Charles City Co. Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. The principal was replaced last school year.
Dinwiddie County	Dinwiddie County Middle	The role of the committee is to monitor the school improvement plan, review data, make and adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. The principal was replaced last school year.
Essex County	Essex Int.	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. The principal was replaced this school year.
Hampton City	C. Vernon Spratley Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum. There have been administrative staff changes.
Hampton City	Francis Mallory Elementary	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum. There is a new principal this year.
Hampton City	Hampton Harbour Academy	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum.
Henrico County	L. Douglas Wilder Middle	The committee plans to complete a comprehensive needs assessment. The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee will meet no less than twice per month. Decision-making is by consensus or majority vote. Progress reports will be submitted to the superintendent regularly. Specific outline of committee meetings provided.
Henrico County	New Bridge School	The committee plans to complete a comprehensive needs assessment. The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee will meet no less than twice per month. Decision-making is by consensus or majority vote. Progress reports will be submitted to the superintendent regularly. Specific outline of committee meetings provided.
Newport News City	Huntington Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided.
Portsmouth City	Cradock Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. Staff was replaced.

Division	School Name	Overview of Request
Prince Edward County	Prince Edward Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. Staff was replaced.
Pulaski County	Pulaski Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets monthly. Decision-making is by consensus with majority vote. This committee has been functioning since February 2007. Ten instructional staff have been replaced.
Richmond City	Chandler Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets bi-weekly. Decision-making is by consensus with majority vote. Administrative staff was replaced.
Richmond City	Thomas C. Boushall Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets bi-weekly. Decision-making is by consensus with majority vote. The school has replaced staff.
Roanoke City	Lucy Addison Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.
Roanoke City	Forest Park Elementary	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.
Roanoke City	Stonewall Jackson Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.
Rockbridge County	Maury River Middle School	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. Staff changes have been made at this school.
Tazewell County	Richlands Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.
Tazewell County	Tazewell Middle	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.

Change in Staff

Three divisions have reconstituted four schools by significantly changing staff. An overview of each request follows:

Division	School	Overview of Request
Grayson County	Baywood Elementary	A new principal was hired last year. Reading First was implemented for the first time last year. New Reading First coordinator was hired last year. A restructuring plan has been approved for this small school.
Grayson County	Mt. Rogers Comb.	A new principal was hired last year. The division has moved an additional classroom teacher in the area of mathematics for grades 6 and 7 from the high school during the day to assist with instructional needs. A new teacher added to limit some combination classes. A restructuring plan has been approved for this small school.
Sussex County	Sussex Central Middle	Principal was replaced two years ago (turnaround specialist). New assistant principal was hired last year. Assistant superintendent was assigned the responsibility to supervise the instructional program and monitor the school's instructional progress last year. Teachers were replaced with highly qualified teachers endorsed in the area of mathematics.
Norfolk Public Schools	Lake Taylor Middle	A new principal was hired with a strong background in mathematics and science and a new assistant principal was hired with a strong background in reading. The entire mathematics team has been staffed with highly qualified teachers. An oversight committee will be implemented, but the description of the committee is limited at this time to the committee make-up.

Change in Student Population

Grayson County Public Schools has requested a rating of Conditionally Accredited for Providence Elementary School based on a change in student population. This school will reconfigure from a K-5 school to a PK-3 school.

Change in Instructional Program

Surry County Public Schools has requested a rating of Conditionally Accredited based on a change in the instructional program at Luther P. Jackson Middle School. In order to provide a stronger social studies literacy program, the instructional program has been redesigned to include U. S. History I in grade 6. In grade 5, students will receive instruction in social studies research skills and literacy skills needed for success in the sequence of U. S. History I, U. S. History II, and Civics and Economics.

Recommendations

The following recommendations for each of the twenty-eight schools requesting a rating of Conditionally Accredited:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School

Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.

4. The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).

In order to make the committee process more effective, align with research-based practices, and offer accountability to the Virginia Board of Education, the following recommendations for each of the schools requesting a rating of Conditionally Accredited based on the implementation of a shared governance committee are proposed:

Division	School Name	Recommendations
Alexandria City	Jefferson-Houston Elementary School	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions.
Caroline County	Caroline Middle	Designate ARDT coordinator to attend Oct 2nd training at VDOE. Report monthly to superintendent and provide copy to assigned auditor. Provide a timeline for committee actions. Inform parents of committee actions.
Charles City County	Charles City Co. Middle	Committee to report monthly to the superintendent and provide copy to PASS coordinator.
Dinwiddie County	Dinwiddie County Middle	Committee to report monthly to the superintendent and provide copy to the assigned auditor.
Essex County	Essex Intermediate	Committee to report monthly to the superintendent and provide copy to PASS coordinator. Provide a timeline for committee actions. Provide benchmark data in the area of warning to the PASS coordinator. Continue to monitor mathematics. Consider using the ARDT in each strand during the year for all 6th and 7th grade students.
Hampton City	C. Vernon Spratley Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions.
Hampton City	Francis Mallory Elementary	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions.
Hampton City	Hampton Harbour Academy	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.
Henrico County	L. Douglas Wilder Middle	Inform parents of committee actions.
Henrico County	New Bridge School	Inform parents of committee actions.

Division	School Name	Recommendations
Newport News City	Huntington Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Define consensus in the decision-making process ensuring that a member from outside of the school is the decision-maker when consensus is not reached. Inform parents of the actions of the committee.
Portsmouth City	Cradock Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach.
Prince Edward County	Prince Edward Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach.
Pulaski County	Pulaski Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions. Inform parents of the actions of the committee.
Richmond City	Chandler Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.
Richmond City	Thomas C. Boushall Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.
Roanoke City	Lucy Addison Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.
Roanoke City	Forest Park Elementary	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.
Roanoke City	Stonewall Jackson Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.
Rockbridge County	Maury River Middle School	Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan. When consensus is not reached, the decision should rest with the director of instruction.
Tazewell County	Richlands Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.
Tazewell County	Tazewell Middle	Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.

The following recommendations are proposed for those schools seeking a rating of Conditionally Accredited based on a change in staff, instructional program, or student population:

Division	School Name	Recommendations
Grayson County	Baywood Elementary	Principal to meet monthly with the Reading First coordinator and assigned auditor to discuss the implementation of the school improvement plan and any relevant data. Report monthly to the superintendent and provide copy to the assigned auditor.
Grayson County	Mt. Rogers Comb.	Principal to meet monthly with the assigned auditor to discuss the implementation of the school improvement plan. Report monthly to the superintendent and provide copy to the assigned auditor.
Grayson County	Providence Elementary	Principal to meet monthly with the Reading First coordinator and the assigned auditor to discuss the implementation of the school improvement plan and any relevant data. Report monthly to the superintendent and provide copy to the assigned auditor.
Surry County	Luther P. Jackson Middle School	It is recommended that an academic review consultant with a background in Social Studies monitor this school's progress throughout the year to ensure that curriculum and instruction are aligned. The assigned consultant should serve as the auditor and work closely with the principal and director of instruction. Report monthly to the superintendent and provide copy of the report to the assigned auditor.
Sussex County	Sussex Central Middle	Principal to report monthly to the superintendent and provide copy of the report to the assigned PASS auditor. Principal to include in the report any findings regarding weak staff and actions taken to improve their instructional delivery to students. PASS auditor to meet monthly with the principal and the assistant superintendent to discuss instructional progress in meeting defined goals as indicated in the school improvement plan.
Norfolk City Schools	Lake Taylor Middle	Designate ARDT coordinator to attend Oct 2nd training at VDOE. Principal and committee to report monthly to superintendent and provide copy to assigned auditor. Provide a more in-depth description of the role and timeline for the committee.

Attachment A provides a summary of each school's present and past SOL pass rates, area(s) of warning, overview of the reconstitution efforts, the department's recommendations, and projected follow-up.

Superintendent's Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the recommendations and ratings of Conditionally Accredited for the twenty-eight schools.

Impact on Resources:
The Office of School Improvement will be required to use the academic review budget to fund auditors assigned to schools that are not PASS schools.

Timetable for Further Review/Action:

Attachment A

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Alexandria City		Name of School: Jefferson-Houston Elementary
Title I: Yes	School Improvement Status: Corrective Action (in addition to Public School Choice and SES)	
Subjects Warned in 2005: Mathematics, History, Science	Subjects Warned in 2006: English, Mathematics	Subjects Warned in 2007: English, Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee monitors curriculum and pacing and meets at least monthly. Decision-making is by consensus with superintendent breaking any ties in decision-making. The committee provides staff development as well. A report to staff and parents is provided quarterly. Administrative leaders were replaced last school year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	75	66
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	58	
Mathematics	61	61
Grade 3 History	91	79
History	71	72
Grade 3 Science	89	77
Science	75	72

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Caroline County		Name of School: Caroline Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English, History	Subjects Warned in 2006: Mathematics, History	Subjects Warned in 2007: Mathematics, History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	University expert, district curriculum or instructional specialist, principal, and teacher(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. Staff changes were made this year and last year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	73	71
Mathematics	52	58
Grade 3 History		
History	66	66
Grade 3 Science		
Science	82	82

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Designate ARDT coordinator to attend Oct 2nd training at VDOE. Report monthly to superintendent and provide copy to assigned auditor. Provide a timeline for committee actions. Inform parents of committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Charles City County		Name of School: Charles City County Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English, History	Subjects Warned in 2006: Mathematics, History	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. The principal was replaced last school year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	71	78
Mathematics	41	66
Grade 3 History		
History	67	87
Grade 3 Science		
Science	76	82

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy to PASS coordinator.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Dinwiddie County		Name of School: Dinwiddie County Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. The principal was replaced last school year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	83	78
Mathematics	59	66
Grade 3 History		
History	79	76
Grade 3 Science		
Science	87	86

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy to the assigned auditor.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Essex County		Name of School: Essex Intermediate
Title I: Yes	School Improvement Status: Corrective Action (in addition to Public School Choice and SES)	
Subjects Warned in 2005:	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. The principal was replaced this school year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	77	82
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	80	80
Mathematics	51	76
Grade 3 History		
History	73	68
Grade 3 Science		
Science	76	83

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy to the PASS coordinator. Provide a timeline for committee actions. Provide benchmark data in the area of warning to the PASS coordinator. Continue to monitor mathematics. Consider using the ARDT in each strand during the year for all 6th and 7th grade students.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Grayson County		Name of School: Baywood Elementary
Title I: Yes	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: History	Subjects Warned in 2007: English
Primary Reconstitution Request: Staff		Additional Reconstitution Request: Instructional Program
Committee Make-up		
Overview	A new principal was hired last year. Reading First was implemented for the first time last year. New Reading First coordinator was hired last year. A restructuring plan has been approved for this small school.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	81	73
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	70	
Mathematics	72	74
Grade 3 History	95	85
History	45	72
Grade 3 Science	95	90
Science	71	79

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Principal to meet monthly with the Reading First coordinator and assigned auditor to discuss the implementation of the school improvement plan and any relevant data. Report monthly to the superintendent and provide copy to the assigned auditor.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Grayson County		Name of School: Mt. Rogers Combined
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Staff		Additional Reconstitution Request: Student
Committee Make-up		
Overview	A new principal was hired last year. The division has moved an additional classroom teacher in the area of mathematics for grades 6 and 7 from the high school during the day to assist with instructional needs. A new teacher added to limit some combination classes. A restructuring plan has been approved for this small school.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	82	87
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	76	84
Mathematics	60	63
Grade 3 History	100	95
History	77	84
Grade 3 Science	86	85
Science	87	88

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Principal to meet monthly with the assigned auditor to discuss the implementation of the school improvement plan. Report monthly to the superintendent and provide copy to the assigned auditor.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Grayson County		Name of School: Providence Elementary
Title I: Yes	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: English, History	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Student Population		Additional Reconstitution Request: Staff
Committee Make-up		
Overview	This school will reconfigure from a K-5 school to a PK-3 school as part of the division's restructuring plan. This school is a Reading First school.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	72	81
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	69	
Mathematics	72	68
Grade 3 History	78	91
History	50	71
Grade 3 Science	85	88
Science	74	77

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Principal to meet monthly with the Reading First coordinator and the assigned auditor to discuss the implementation of the school improvement plan and any relevant data. Report monthly to the superintendent and provide copy to the assigned auditor.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Hampton City		Name of School: C. Vernon Spratley Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics, History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum. There have been Administrative staff changes.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	71	74
Mathematics	30	46
Grade 3 History		
History	77	69
Grade 3 Science		
Science	73	77

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy to the assigned auditor.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Hampton City		Name of School: Francis Mallory Elementary
Title I: Yes	School Improvement Status: Public School Choice and Supplemental Education Services	
Subjects Warned in 2005: Science	Subjects Warned in 2006: Science	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum. There is a new principal this year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	76	79
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	77	
Mathematics	70	69
Grade 3 History	79	86
History	74	71
Grade 3 Science	76	76
Science	58	74

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Hampton City		Name of School: Hampton Harbour Academy
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English, Mathematics, History, Science	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: English, Mathematics, History, Science
Primary Reconstitution Request: Governance		Additional Reconstitution Request:
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	61	61
Mathematics	32	51
Grade 3 History		
History		47
Grade 3 Science		
Science	35	37

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
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Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Henrico County		Name of School: L. Douglas Wilder Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and academic review coordinator	
Overview	The committee plans to complete a comprehensive needs assessment. The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee will meet no less than twice per month. Decision-making is by consensus or majority vote. Regular progress reports will be submitted to the superintendent regularly. Specific outline of committee meetings provided.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	76	79
Mathematics	41	57
Grade 3 History		
History	74	79
Grade 3 Science		
Science	81	89

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Inform parents of committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Henrico County		Name of School: New Bridge School
Title I: Yes	School Improvement Status: Public School Choice	
Subjects Warned in 2005: English	Subjects Warned in 2006: English, Mathematics	Subjects Warned in 2007: English, Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and academic review coordinator	
Overview	The committee plans to complete a comprehensive needs assessment. The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee will meet no less than twice per month. Decision-making is by consensus or majority vote. Progress reports will be submitted to the superintendent regularly. Specific outline of committee meetings provided.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	59	64
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	45	45
Mathematics	28	50
Grade 3 History	75	75
History	81	78
Grade 3 Science	75	67
Science	62	76

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Inform parents of committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
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Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Newport News City	Name of School: Huntington Middle	
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: English	Subjects Warned in 2007: Mathematics, History
Primary Reconstitution Request: Governance	Additional Reconstitution Request: Staff	
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, and teacher(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	66	76
Mathematics	70	68
Grade 3 History		
History	77	66
Grade 3 Science		
Science	75	82

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Define consensus in the decision-making process ensuring that a member from outside of the school is the decision-maker when consensus is not reached. Inform parents of committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
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Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Norfolk City		Name of School: Lake Taylor Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Staff		Additional Reconstitution Request: Governance
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, and teacher(s)	
Overview	A new principal was hired with a strong background in mathematics and science and a new assistant principal was hired with a strong background in reading. The entire mathematics team has been staffed with highly qualified teachers. An oversight committee will be implemented, but the description of the committee is limited at this time to the committee make-up.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	73	71
Mathematics	41	53
Grade 3 History		
History	81	89
Grade 3 Science		
Science	75	76

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Designate ARDT coordinator to attend Oct 2nd training at VDOE. Principal and committee to report monthly to superintendent and provide copy to assigned auditor. Provide a more indepth description of the role and timeline for the committee.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
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Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Portsmouth City		Name of School: Cradock Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English, Mathematics, Science	Subjects Warned in 2006: English, Mathematics, History, Science	Subjects Warned in 2007: English, Mathematics, Science
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. Staff was replaced.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	60	64
Mathematics	28	54
Grade 3 History		
History	61	71
Grade 3 Science		
Science	61	69

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Prince Edward County		Name of School: Prince Edward Middle
Title I: Yes	School Improvement Status: Plan for Alternative Governance (in addition to Choice, SES and Corrective Action)	
Subjects Warned in 2005: English, Science	Subjects Warned in 2006: Mathematics, Science, History	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. Staff was replaced.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	78	77
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	73	74
Mathematics	49	62
Grade 3 History		
History	62	71
Grade 3 Science		
Science	68	75

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Pulaski County	Name of School: Pulaski Middle	
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance	Additional Reconstitution Request: Staff	
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, and teacher(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets monthly. Decision-making is by consensus with majority vote. This committee has been functioning since February 2007. Ten instructional staff have been replaced.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	78	75
Mathematics	48	62
Grade 3 History		
History	75	74
Grade 3 Science		
Science	84	84

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions. Inform parents of committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
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Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Richmond City		Name of School: Chandler Middle
Title I: Yes	School Improvement Status: Implement Alternative Governance (in addition to Public School Choice and SES)	
Subjects Warned in 2005: English	Subjects Warned in 2006: English, Mathematics, History	Subjects Warned in 2007: English, Mathematics, History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, and teacher(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets bi-weekly. Decision-making is by consensus with majority vote. Administrative staff was replaced.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	60	68
Mathematics	35	54
Grade 3 History		
History	52	68
Grade 3 Science		
Science	73	82

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
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Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Richmond City		Name of School: Thomas C. Boushall Middle
Title I: Yes	School Improvement Status: Corrective Action (in addition to Public School Choice and SES)	
Subjects Warned in 2005: English	Subjects Warned in 2006: English, Mathematics, History	Subjects Warned in 2007: English, Mathematics, History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, and teacher(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets bi-weekly. Decision-making is by consensus with majority vote. The school has replaced staff.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	64	62
Mathematics	48	54
Grade 3 History		
History	44	47
Grade 3 Science		
Science	73	74

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
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Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Roanoke City		Name of School: Lucy Addison Middle School
Title I: Yes	School Improvement Status: Implement Supplemental Services and Public School Choice	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics, History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), academic review coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	71	70
Mathematics	48	67
Grade 3 History		
History	74	65
Grade 3 Science		
Science	74	82

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Roanoke City		Name of School: Forest Park Elementary School
Title I: Yes	School Improvement Status: Corrective Action (in addition to Public School Choice and SES)	
Subjects Warned in 2005: English, Mathematics, History, Science	Subjects Warned in 2006: English, Mathematics, History	Subjects Warned in 2007: English
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	71	69
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	67	
Mathematics	55	75
Grade 3 History	73	82
History	64	70
Grade 3 Science	94	81
Science	75	74

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.

Approved by Board of Education	
Assigned PASS/AR Auditor	
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Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Roanoke City		Name of School: Stonewall Jackson Middle School
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics, History	Subjects Warned in 2007: History
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), academic review coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	78	71
Mathematics	45	70
Grade 3 History		
History	59	64
Grade 3 Science		
Science	86	81

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Rockbridge County		Name of School: Maury River Middle School
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request: Staff
Committee Make-up	Outside expert, district curriculum or instructional specialist, principal, teacher(s), and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. Staff changes have been made at this school.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	80	75
Mathematics	59	69
Grade 3 History		
History	83	77
Grade 3 Science		
Science	91	88

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned auditor. Provide the auditor with a projected timeline for committee actions based on the school's alternative accreditation plan. When consensus is not reached, the decision should rest with the director of instruction.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Surry County		Name of School: Luther P. Jackson Middle School
Title I: Yes	School Improvement Status:	
Subjects Warned in 2005: NA	Subjects Warned in 2006: History	Subjects Warned in 2007: History
Primary Reconstitution Request: Instructional Program		Additional Reconstitution Request: Staff
Committee Make-up		
Overview	In order to provide a stronger social studies literacy program, the instructional program has been redesigned to include U. S. History I in grade 6. In grade 5, students will receive instruction in social studies research skills and literacy skills needed for success in the sequence of U. S. History I, U. S. History II, and Civics and Economics. A new principal was hired for this school year.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	84	84
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	80	85
Mathematics	71	72
Grade 3 History		
History	58	67
Grade 3 Science		
Science	79	79

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: It is recommended that a academic review consultant with a background in Social Studies monitor this school's progress throughout the year to ensure that curriculum and instruction are aligned. The assigned consultant should serve as the auditor and work closely with the principal and director of instruction. Report monthly to the superintendent and provide copy of the report to the assigned auditor.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Sussex County		Name of School: Sussex Central Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English, Mathematics, Science	Subjects Warned in 2006: English, Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Staff		Additional Reconstitution Request: Instructional Program
Committee Make-up		
Overview	Principal was replaced two years ago (turnaround specialist). New assistant principal was hired last year. Assistant superintendent was assigned the responsibility to supervise the instructional program and monitor the school's instructional progress last year. Teachers were replaced with highly qualified teachers endorsed in the area of mathematics.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	67	75
Mathematics	36	63
Grade 3 History		
History	70	81
Grade 3 Science		
Science	70	70

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Principal to report monthly to the superintendent and provide copy of the report to the assigned PASS auditor. Principal to include in the report any findings regarding weak staff and actions taken to improve their instructional delivery to students. PASS auditor to meet monthly with the principal and the assistant superintenden+AH9t to discuss instructional progress in meeting defined goals as indicated in the school improvement plan.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Tazewell County		Name of School: Richlands Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request:
Committee Make-up	University expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	76	82
Mathematics	40	66
Grade 3 History		
History	100	78
Grade 3 Science		
Science	90	90

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Tazewell County		Name of School: Tazewell Middle
Title I: No	School Improvement Status:	
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics
Primary Reconstitution Request: Governance		Additional Reconstitution Request:
Committee Make-up	University expert, district curriculum or instructional specialist, principal, teacher(s), PASS coordinator and parent(s)	
Overview	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)		
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	82	84
Mathematics	47	67
Grade 3 History		
History	100	84
Grade 3 Science		
Science	89	85

Recommendations
The department recommends the following for each school requesting a rating of Conditionally Accredited: ▪ The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts. ▪ LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement. ▪ If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all 6th and 7th grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist. LEA representatives and principals will participate in in-service provided by the department on the use of the ARDT. ▪ The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board). Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. Provide the auditor with a projected timeline for committee actions.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Board of Education Agenda Item

Item: F. **Date:** September 26, 2007

Topic: First Review of a Request for a Continued Rating of Conditionally Accredited from Sussex County Public Schools for Annie B. Jackson and Ellen W. Chambliss Elementary Schools

Presenter: Mrs. Kathleen M. Smith, Director, Office of School Improvement, Division of Student Assessment and School Improvement
Dr. Charles Harris, Superintendent, Sussex County Public Schools

Telephone Number: (804) 225-2865 E-Mail Address: Kathleen.Smith@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
____ State or federal law or regulation
_X_ Board of Education regulation
____ Other: _____

___ Action requested at this meeting _X_ Action requested at future meeting: Final Review at Future Meeting

Previous Review/Action:

____ No previous board review/action

_X_ Previous review/action
date October 25, 2006
action Board granted a rating of Conditionally Accredited to both schools

Background Information:

8 VAC 20-131-300.C states that a school shall be rated Accreditation Denied based on a school's academic performance during academic years ending in 2006 and beyond, if it fails to meet the requirements to be rated Fully Accredited, for the preceding three consecutive years or for three consecutive years anytime thereafter.

As outlined in 8 VAC 20-131-315, as an alternative to the memorandum of understanding required for schools rated Accreditation Denied, a local school board may choose to reconstitute the school and apply to the Board of Education for a rating of Conditionally Accredited. The application shall outline specific responses that address all areas of deficiency that resulted in the Accreditation Denied status.

As defined by the Standards of Accreditation, “reconstitution” means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied that may include, but not be limited to, restructuring a school’s governance, instructional program, staff or student population.

Summary of Major Elements

Sussex County Public Schools has requested a continuation of the rating Conditionally Accredited based on a change in student population at Ellen W. Chambliss Elementary and Annie B. Jackson Elementary. Implemented last year, this change moved the 3rd grade from Annie B. Jackson Elementary to Ellen W. Chambliss Elementary.

The English pass rate at Ellen W. Chambliss Elementary increased from fifty percent (3rd and 5th grade) to seventy-three percent (3rd grade only). Mathematics pass rates increased from forty-one to ninety-three percent. The English pass rate at Annie B. Jackson Elementary School increased from fifty percent (3rd and 5th grade) to sixty-five percent (4th and 5th grades). Mathematics pass rates increased from forty-one percent to fifty-nine percent.

The letter requesting the continued rating of Conditionally Accredited indicates that the school division is continuing its efforts to close those schools, but has not been successful in receiving funding from the Board of Supervisors to consolidate its elementary schools into one modern school. Efforts will continue to restructure the grades at Jackson Elementary while continuing to seek the construction of the new elementary school.

The following recommendations are indicated for both Annie B. Jackson Elementary and Ellen W. Chambliss Elementary:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
3. The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations for both schools: Committee to report monthly to the superintendent and provide a copy of the report to the assigned PASS coach. The coach will follow the reading and mathematics programs closely and make recommendations to the superintendent regarding the program's continued implementation and/or modifications that are needed in order to ensure that student achievement is improved.

Superintendent's Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education accept for first review the continued request for a rating of Conditionally Accredited from Sussex County Public Schools for Annie B. Jackson and Ellen W. Chambliss Elementary Schools.

Impact on Resources:
None

Timetable for Further Review/Action:
Final action will be requested at a future meeting.

Attachment A

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Sussex County		Name of School: Annie B. Jackson Elementary
Title I: Yes	School Improvement Status: Corrective Action	
Subjects Warned in 2005: English, Mathematics, Science	Subjects Warned in 2006: English, Mathematics, Science	Subjects Warned in 2007: English, Mathematics, History, Science
Primary Reconstitution Request: Student Population		Additional Reconstitution Request:
Committee Make-up		
Overview	This is the 2nd conditional request. Pass rates at grade 4 and 5 have demonstrated improvement in mathematics and English.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	50	65
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	61 (Grade 4 only)	
Mathematics	41	59
Grade 3 History	64	
History	71	55
Grade 3 Science	60	
Science	44	50

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. The coach will follow the reading and mathematics programs closely and make recommendations to the superintendent regarding the program's continued implementation and/or modifications that are needed in order to ensure that student achievement is improved.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Virginia Department of Education
Division of Student Assessment and School Improvement
Conditional Request & Follow-Up

Name of Division: Sussex County		Name of School: Ellen W. Chambliss Elementary
Title I: Y	School Improvement Status:	
Subjects Warned in 2005: English, Mathematics, Science	Subjects Warned in 2006: English, Mathematics, Science	Subjects Warned in 2007: English
Primary Reconstitution Request: Student Population		Additional Reconstitution Request:
Committee Make-up		
Overview	This is the 2nd conditional request. Pass rates at grade 3 have demonstrated improvement in mathematics and English.	

PASS Rates	2006	2007
Grade 3 and 5 English (2006) Grade 3, 4, and 5 English (2007)	50	73
Grade 4 , 6, 7, 8, and EOC (2006) Grade 6, 7, 8 and EOC English (2007)	61 (Grade 4 only)	
Mathematics	41	93
Grade 3 History	64	91
History	71	
Grade 3 Science	60	86
Science	44	

Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

- The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts.
- LEA staff assigned to work with the school throughout the year will attend in-service provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. This in-service will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement.
- The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the board).

Additionally, the board makes the following recommendations: Committee to report monthly to the superintendent and provide copy of the report to the assigned PASS coach. The coach will follow the reading and mathematics programs closely and make recommendations to the superintendent regarding the program's continued implementation and/or modifications that are needed in order to ensure that student achievement is improved.

Approved by Board of Education	
Assigned PASS/AR Auditor	
Monitoring Report Nov 30	
Monitoring Report Jan 30	
Monitoring Report March 30	
Monitoring Report May 30	

Board of Education Agenda Item

Item: _____G._____ **Date:** __September 26, 2007__

Topic: Final Review of the Board of Education's Comprehensive Plan: 2007-2012

Presenter: Ms. Anne Wescott, Assistant Superintendent for Policy and Communications

Telephone Number: (804) 225-2403 E-Mail Address: Anne.Wescott@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

____ Board review required by
_X_ State or federal law or regulation
____ Board of Education regulation
____ Other:

_X_ Action requested at this meeting ___ Action requested at future meeting:

Previous Review/Action:

____ No previous board review/action

__X_ Previous review/action: Board of Education Planning Session; June business meeting
Date: May 30-31 and June 28, 2007
Action: Discussion of proposed contents for the updated comprehensive plan

Background Information: The *Code of Virginia* requires the following:

§ 22.1-253.13:6. Standard 6. Planning and public involvement.

A. The Board of Education shall adopt a statewide comprehensive, unified, long-range plan based on data collection, analysis, and evaluation. Such plan shall be developed with statewide participation. The Board shall review the plan biennially and adopt any necessary revisions. . . .

This plan shall include the objectives of public education in Virginia, including strategies for improving student achievement then maintaining high levels of student achievement; an assessment of the extent to which these objectives are being achieved; a forecast of enrollment changes; and an assessment of the needs of public education in the Commonwealth. . . . The Board shall also develop, consistent with, or as a part of, its comprehensive plan, a detailed comprehensive, long-range plan to integrate educational technology into the Standards of Learning and the curricula of the public schools in Virginia, including career and technical education programs. The Board shall review and approve the comprehensive plan for educational technology and may require the revision of such plan as it deems necessary…

The Board of Education's current Comprehensive Plan covers the years 2005-2011 and was adopted in September 2005. In April 2007 and in response to the provisions of the *Code of Virginia* requiring a review every two years, the Board of Education initiated the process of updating its current plan. At its May 2007 planning session the Board discussed its priorities for the coming years and developed its vision and mission statements and outlined its priorities and objectives (priorities) for action in the coming years. At the June 2007 meeting, the Board discussed the revisions that will be necessary to update its vision and mission statements, objectives, and strategies. Following the discussions and decisions of the Board at the May and June meetings, an initial draft of the Comprehensive Plan for 2007-2012 was distributed for a 45-day public comment period.

The initial draft was forwarded to statewide organizations, local school leaders, government officials, statewide professional education organizations, and interested advocacy groups and individuals. All were encouraged to make suggestions and comments. (NOTE: A copy of all public comment received during the comment period was mailed to Board of Education members prior to the September 26th meeting. Copies are available for public inspection upon request.)

Summary of Major Elements: A draft, as revised, of the Comprehensive Plan: 2007-2012 is attached. The revised draft contains the following information, as specified in the *Code of Virginia*:

- The Board's vision statement;
- The Board's mission statement;
- An overview of the Board's objectives, or priorities, for action;
- A summary of the ways the achievement of objectives will be measured;
- An outline of the strategies to be implemented to meet objectives;
- A forecast of statewide enrollment changes over the next five years; and
- An assessment of the extent to which current objectives (contained in the Comprehensive Plan: 2005-2011) are being achieved.

The contents of the revised draft reflect the expressed directives, priorities, and concerns of the Board of Education and, where possible, the suggestions made by organizations and citizens during the public comment period.

The following is a summary of the changes in the text that have been made since the initial draft as a result of public comment and additional staff input:

1. Objective 8 has been modified as follows: *The Board of Education will provide leadership to help schools and school divisions ~~create~~ ensure a safe and secure environment conducive to ~~ensuring~~ facilitating the teaching and learning process.*

2. Strategies have been added for objective 8.

3. Metrics have been added to two objectives:

    - Objective 2 regarding eliminating the achievement gap: "Calculate changes over time in the percent of students who drop out of school in each NCLB subgroup."

    - Objective 6 regarding educational personnel retention and training: "Calculate annual retention rates for educational personnel in Virginia."

4. Enrollment projections have been updated to reflect the latest data available.

5. The tables showing progress on the 2005 objectives have been updated to reflect the most recent actions of the Board of Education in the relevant areas.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education make any additional changes, as agreed to by the Board, and adopt the Comprehensive Plan 2007-2012, with the understanding that department staff will make additional editorial adjustments as may be necessary.

Impact on Resources: Any costs associated with the development and dissemination of the document will be provided by Department of Education funds according to state procurement policies and procedures.

Timetable for Further Review/Action: Following final adoption of the plan, department staff will begin the data analysis that will be necessary to link the contents of the Board of Education's Annual Report on the Condition and Needs of Public Schools to the measures contained in the comprehensive plan. The data analysis in the annual report (first review is scheduled for the October 18th meeting) will be used to assess progress in meeting objectives stated in the comprehensive plan.

REVISED DRAFT

BOARD OF EDUCATION
COMPREHENSIVE PLAN: 2007-2012

Board of Education
Commonwealth of Virginia

September 26, 2007

Members of the Board of Education
as of June 30, 2007

Dr. Mark E. Emblidge
President
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Richmond, VA 23220

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Superintendent of Public Instruction

Dr. Billy K. Cannaday, Jr.
Virginia Department of Education

BOARD OF EDUCATION
COMPREHENSIVE PLAN: 2007-2012
Executive Summary

The Board of Education's *Comprehensive Plan: 2007-2012* updates the objectives set forth in the Board's previous plan, which covered the years 2005-2010. Building upon the previous plan, the two-year update reflected in this document provides the framework for resources and policy development to continue Virginia's forward momentum in student achievement.

Highlights of the Board of Education's *Comprehensive Plan: 2007-2012*:

- The Board of Education's vision and mission statements and objectives for public education provide the framework for leadership, advocacy, and oversight for the public education system in Virginia. The statements are forward-looking and acknowledge the programs and services of Virginia's public schools as well as the increasingly diverse needs of students who will live and work in an expanding and complex global, high tech economy.

- The Board of Education's Vision:
  The vision of the Board of Education and Superintendent of Public Instruction, in cooperation with their partners, is to create an excellent statewide system of public education that derives strength from our diversity and that ensures equality of opportunity for each student in a safe and healthy learning environment that prepares all students to be capable, responsible, and self-reliant citizens in the global society.

- The Board of Education's Mission:
  The mission of the Board of Education and Superintendent of Public Instruction, in cooperation with their partners, is to set education policy and provide leadership that improves the achievement of all students by advocating for effective programs that address individual and diverse learning needs of students, establishes high standards and has high expectations for learning, measures student performance, provides accountability to the public, and promotes a culture of lifelong learning.

- The Board of Education's objectives for public education for 2007-2012 are as follows:

  OBJECTIVE 1: The Board of Education will continue to enhance the quality standards for all public schools in Virginia.

  OBJECTIVE 2: The Board of Education will provide leadership to help schools and school divisions eliminate the achievement gap between groups of students and increase the academic success of all students.

  OBJECTIVE 3: The Board of Education will support accountability for all schools, focusing on assisting chronically low-performing schools and school divisions while recognizing all schools and school divisions as they move towards excellence.

OBJECTIVE 4: The Board of Education will work cooperatively with partners to help ensure that all young children are ready to enter kindergarten with the skills they need for success.

OBJECTIVE 5: The Board of Education will establish policies that support the attainment of literacy skills of all students, kindergarten through grade 12.

OBJECTIVE 6: The Board of Education will establish policies and standards that enhance the preparation, recruitment, and retention of educational personnel, including their meaningful, ongoing professional development.

OBJECTIVE 7: The Board of Education will provide leadership in implementing the provisions of state and federal laws and regulations.

OBJECTIVE 8: The Board of Education will provide leadership to help schools and school divisions ensure a safe and secure environment conducive to facilitating the teaching and learning process.

- The comprehensive plan also includes an assessment of the extent to which the objectives for public education are being met. The assessment shows that for the past eight years in which the current accreditation requirements have been in place, Virginia's public schools have steadily improved.

- The Board of Education is adamant that all of Virginia's children—regardless of their personal circumstances—must have the school environment, the resources, and the teachers to help them be successful at school. However, there remain persistent and troubling differences in the achievement level of students who are struggling academically, and many students need costly, intensive instructional support to succeed in school.

- Record enrollment in public elementary and secondary schools will continue over the next five years, according to research conducted by UVA's Weldon Cooper Center for Public Service (2007). In 2011, Virginia's public schools will enroll over 1.2 million students in Kindergarten through the 12th grade, an increase of 31,857 students over current membership. While enrollment overall will grow, not all divisions will experience growth. Sixty-three of the state's 132 school divisions will enroll more students in five years, and six school divisions projected to lose over 1,000 students in the next five years.

- Demographic trends show clearly that diverse population groups (i.e., limited English proficient and economically disadvantaged families) are increasingly making up a larger proportion of the overall population and that Virginia is experiencing shortages of teachers in certain subject areas. These trends pose serious challenges for public school leaders.

Statutory Requirement for Updating the Comprehensive Plan

§ 22.1-253.13:6. Standard 6. Planning and public involvement.
A. The Board of Education shall adopt a statewide comprehensive, unified, long-range plan based on data collection, analysis, and evaluation. Such plan shall be developed with statewide participation. The Board shall review the plan biennially and adopt any necessary revisions. The Board shall post the plan on the Department of Education's website if practicable, and, in any case, shall make a hard copy of such plan available for public inspection and copying.

This plan shall include the objectives of public education in Virginia, including strategies for improving student achievement then maintaining high levels of student achievement; an assessment of the extent to which these objectives are being achieved; a forecast of enrollment changes; and an assessment of the needs of public education in the Commonwealth. In the annual report required by § 22.1-18, the Board shall include an analysis of the extent to which these Standards of Quality have been achieved and the objectives of the statewide comprehensive plan have been met. The Board shall also develop, consistent with, or as a part of, its comprehensive plan, a detailed comprehensive, long-range plan to integrate educational technology into the Standards of Learning and the curricula of the public schools in Virginia, including career and technical education programs. The Board shall review and approve the comprehensive plan for educational technology and may require the revision of such plan as it deems necessary…

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Board of Education Objectives: 2005-2007

BOARD OF EDUCATION
COMPREHENSIVE PLAN: 2007-2012

> *Eighty percent of the jobs today's kindergartners will occupy sometime in the future do not yet exist, and the average kindergartner of today will experience four different careers and nine different jobs in his lifetime.*
>
> Ed Barlow, April 26, 2007

These were the words of a nationally recognized futurist, Ed Barlow, as he recently addressed a conference on Virginia's Workforce for the 21st Century. The members of the Board of Education were present to hear Mr. Barlow describe in vivid terms the future awaiting Virginia's young people, a future that will be far different than that of their parents and grandparents. Mr. Barlow echoed the urgent theme of the National Center on Education and the Economy's Commission on the Skills of the American Workforce (2007), which pulls no punches about the education challenges ahead:

> This is a world in which a very high level of preparation in reading, writing, speaking, mathematics, science, literature, history, and the arts will be an indispensable foundation for everything that comes after for most members of the workforce. It is a world in which comfort with ideas and abstractions is the passport to a good job, in which creativity and innovation are the key to the good life, in which high levels of education — a very different kind of education than most of us have had — are going to be the only security there is. . . . . The best employers the world over will be looking for the most competent, most creative and most innovative people on the face of the earth and will be willing to pay them top dollar for their services. This will be true not just for the top professionals and managers, but up and down the length and breadth of the workforce. Those countries that produce the most important new products and services can capture a premium in world markets that will enable them to pay high wages to their citizens.

There are obvious questions for the Board of Education as it sets its goals for the coming years: Will Virginia's young people be ready? Will they be equipped with the knowledge and skills they need to be successful? What is the role of the Board of Education in leading the charge for excellence?

With these questions about the future sharply in mind, the Board of Education has set its vision, mission, and objectives for the next several years. By working with many partners, the Board of Education intends to move Virginia's education system dramatically forward, fostering the development of a 21st Century skills pipeline that will prepare today's students to be tomorrow's working adults—in short, an education system that equips all students to be responsible and self-reliant citizens of our increasingly complex and diverse global society.

Board of Education Vision Statement: 2007-2012

The vision of the Board of Education and Superintendent of Public Instruction, in cooperation with their partners, is to create an excellent statewide system of public education that derives strength from our diversity and that ensures equality of opportunity for each student in a safe and healthy learning environment that prepares all students to be capable, responsible, and self-reliant citizens in the global society.

Board of Education Mission Statement: 2007-2012

The mission of the Board of Education and Superintendent of Public Instruction, in cooperation with their partners, is to set education policy and provide leadership that improves the achievement of all students by advocating for effective programs that address individual and diverse learning needs of students, establishes high standards and has high expectations for learning, measures student performance, provides accountability to the public, and promotes a culture of lifelong learning.

Board of Education Objectives: 2007-2012

The Board of Education's objectives are constantly evolving. The objectives are revised every two years; therefore, they must be viewed as a continuous process of assessment and evaluation, all of which lead to adjustments as needed. Perhaps most importantly, the Board of Education's objectives, as well as the strategies and activities to implement the objectives, are tied closely to the requirements of state and federal statutes and regulations and on the availability and appropriation of funding for public education.

In addition to working to meet its objectives, the Board must also be keenly aware of and responsive to regulatory or statutory requirements. Thus, the Board will have major policy decisions to make during the next two years in the following areas:

- Career and technical education state plan and regulations;
- Special education regulations;
- Standards of Accreditation, including graduation rates and graduation policies in the accountability system and establishing the technical diplomas;
- Standards of Learning in history (2008), mathematics (2009), English (2010), and science (2010), followed by the curriculum framework and textbook adoption; and
- Standards of Quality

The Board of Education's objectives provide the roadmap for moving from competence to excellence for Virginia's public schools. The objectives define the important priorities for the actions and strategies the Board will use to set policies and directions for the public schools. During its planning session and discussions in May and June 2007, the Board set the following eight objectives:

> OBJECTIVE 1: The Board of Education will continue to enhance the quality standards for all public schools in Virginia.
>
> OBJECTIVE 2: The Board of Education will provide leadership to help schools and school divisions eliminate the achievement gap between groups of students and increase the academic success of all students.

OBJECTIVE 3: The Board of Education will support accountability for all schools, focusing on assisting chronically low-performing schools and school divisions while recognizing all schools and school divisions as they move towards excellence.

OBJECTIVE 4: The Board of Education will work cooperatively with partners to help ensure that all young children are ready to enter kindergarten with the skills they need for success.

OBJECTIVE 5: The Board of Education will establish policies that support the attainment of literacy skills of all students, kindergarten through grade 12.

OBJECTIVE 6: The Board of Education will establish policies and standards that enhance the preparation, recruitment, and retention of educational personnel, including their meaningful, ongoing professional development.

OBJECTIVE 7: The Board of Education will provide leadership in implementing the provisions of state and federal laws and regulations.

OBJECTIVE 8: The Board of Education will provide leadership to help schools and school divisions ensure a safe and secure environment conducive to facilitating the teaching and learning process.

Measures for Objectives: 2007-2012

The Virginia Board of Education is committed to assessing its progress in leading Virginia to create an excellent statewide system of public education. Part of that commitment involves assessing the Board's progress towards meeting the objectives described in the Board's comprehensive plan and the education system described in the Board's vision and mission statements. The metrics used to assess the Board's progress will provide information that describes how well the Board meets its objectives and the state of education in Virginia.

The Board's actions are intended to support all students' ability to achieve to their highest potential. The Board, however, is limited in the direct impact it can have on student achievement. As well, many of the actions taken by the Board will take years for any impact to be seen in achievement scores. Therefore, measures related to student outcomes will be considered over time and in conjunction with metrics that provide immediate information about the Board's progress in achieving its objectives.

OBJECTIVE 1: The Board of Education will continue to enhance the quality standards for all public schools in Virginia.

Metrics

The Board of Education regularly reviews and revises the Standards of Quality (SOQ), Standards of Accreditation (SOA), and Standards of Learning (SOL). Throughout this process, the Board collects data and information that supports its ability to thoughtfully and deliberately make revisions that are designed to enhance the quality of the standards

to which Virginia's students are held.

To measure whether the Board's actions continue to enhance the quality standards, the Board will initiate a process in which evidence from several sources are considered to determine whether changes to the standards are thought to enhance their quality. That is, standards will be considered with respect to research-based evidence and subject-matter experts' recommendations for best practices. The goals of this process are to validate the standards and assess whether the recommended changes will enhance their quality.

The specific measures used to assess the Board's actions in a given year will depend on which standards are reviewed and the amount of evidence available for the validation process.

OBJECTIVE 2: The Board of Education will provide leadership to help schools and school divisions eliminate the achievement gap between groups of students and increase the academic success of all students.

Metrics

1) Document specific actions taken by the Board that demonstrate leadership in the area of eliminating the achievement gaps between the majority of the population and students who:
   - are economically disadvantaged;
   - have disabilities;
   - are English language learners;
   - belong to subgroups consistent with the NCLB subgroups, which have historically achieved lower levels of academic performance than the majority of students.

   Examples of such actions include providing direct support to low-performing schools with large populations of historically underperforming subgroups; recommending and supporting new initiatives that provide support to the educational success of these groups; and hosting speakers and attending workshops, forums, and conferences that provide information about demonstrated methods to eliminate the achievement gap.

2) Calculate changes over time in the percent of students in each NCLB subgroup performing at the basic, proficient, and advanced level in mathematics, reading, writing, history and social sciences, and science. Data would be disaggregated in accordance with the subgroups Virginia reports for purposes of NCLB.

3) Calculate changes over time in the percent of students earning diplomas and certificates of completion in each NCLB subgroup. Calculate changes over time for the high school graduation rate.

4) Calculate changes over time in the percent of students who drop out of school in each subgroup.

5) Identify the percent of schools and school divisions in which there is no statistically significant difference between the pass rates on statewide assessments at the proficient and advanced levels; graduation rates between subgroups consistent with NCLB reporting criteria and the statewide pass rate of all students; and observe changes over time.

OBJECTIVE 3: The Board of Education will support accountability for all schools, focusing on assisting chronically low-performing schools and school divisions while recognizing all schools and school divisions as they move towards excellence.

Metrics

1) Document major Board of Education activities that assist chronically low-performing schools become institutions that meet or exceed minimum accountability requirements.

2) Calculate the changes over time in the number and percent of schools that meet school accountability requirements.

3) Calculate changes over time in the number and percent of chronically low-performing schools and school divisions in the Commonwealth.

4) Document Board of Education actions taken to recognize schools moving towards excellence.

5) Calculate changes over time in the number and percentage of schools that meet excellence standards. This measure requires the Board to establish standards of excellence.

OBJECTIVE 4: The Board of Education will work cooperatively with partners to help ensure that all young children are ready to enter kindergarten with the skills they need for success.

Metrics

1) Document major Board of Education activities that support schools' ability to facilitate pre-kindergarten children's success.

2) Calculate changes over time in the percent of students in kindergarten who are considered ready for kindergarten upon entry, based on screening or proficiency assessments provided in kindergarten.1

3) Calculate changes over time in the percentage of at-risk children served by the Virginia Preschool Initiative or other preschool programs with known quality standards.

1 In 2007, the only measure used statewide screens students for their pre-literacy skills. If other measures become available, they should be included in this calculation.

Objective 5: The Board of Education will establish policies that support the attainment of literacy skills of all students, kindergarten through grade 12.

Metrics

1) Document new Board of Education policies that support literacy in all students.

2) Calculate changes over time in student performance on the reading and writing assessments in grades 3 through 8 and the end-of-course English reading and writing assessments.

3) Calculate changes over time for the high school graduation rate.

4) Assess students' preparation for postsecondary education and the workplace as information becomes available.

OBJECTIVE 6: The Board of Education will establish policies and standards that enhance the preparation, recruitment, and retention of educational personnel, including their meaningful, ongoing professional development.

Metrics

1) To measure whether the Board's actions enhance the *preparation*, recruitment, retention *and meaningful, ongoing professional development for educational personnel*, the Board will initiate a process in which evidence from several sources are considered to determine whether changes to the standards are thought to enhance their quality. That is, standards will be considered with respect to research-based evidence and subject-matter experts' recommendations for best practices. The goals of this process are to validate the Board's policies and standards and assess whether the recommended changes will enhance their quality.

2) Calculate changes over time in the percent of teachers who are highly qualified, as defined by Virginia's NCLB accountability workbook.

3) Document that school divisions are meeting the SOQ professional development requirements.

OBJECTIVE 7: The Board of Education will provide leadership in implementing the provisions of state and federal laws and regulations.

Metric

1) Document Board of Education policies and practices that demonstrate leadership in and compliance with implementing provisions of state and federal laws and regulations.

OBJECTIVE 8: The Board of Education will provide leadership to help schools and school divisions ensure a safe and secure environment conducive to facilitating the teaching and learning process.

Metrics

1) Document the Board's actions that demonstrate leadership in creating safe and secure environments.

2) Calculate changes over time in quantitative measures of school safety and security. Measures will be developed using Virginia's Web-based reporting system and evidence available from other sources.

Strategies to Implement Objectives: 2007-2012

OBJECTIVE 1: The Board of Education will continue to enhance the quality standards for all public schools in Virginia.

BACKGROUND: The Board of Education's constitutional responsibility is "to determine and prescribe" the Standards of Quality (SOQ) for Virginia's school divisions. Revising and updating the SOQ to ensure that the standards are adequate and appropriate for today's schools and students is ongoing.

The SOQ was updated in 2006, effective July 1, 2007; the Standards of Accreditation (SOA) were last revised in 2006. Standards of Learning (SOL) are revised by content area according to an existing schedule. In the planning period ahead, the Board will undertake review of a significant part of its education regulations.

In previous plans, activities related to the Standards of Learning have been included under objective 2, not objective 1. Since this objective addresses all standards, *review and adoption* of the Standards of Learning can reasonably be included under this objective.

Currently, there are no measurements in place that enable the Board to determine whether the "quality standards" are in place that will lead students to excel. As the Board reviews and revises standards, it may wish to identify measures that will provide some benchmarks for evaluating them.

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Review and revise the Standards of Quality.	X	X	X	X		X		X
2. Review and revise the Standards of Accreditation.	X	X	X	X	X			
3. Review and revise the Standards of Learning in:								
Computer Technology	X							X
Fine Arts		X						
Foreign Languages			X					

Objective 1 continued: Health, Physical Education, & Driver Ed				X				
History and Social Sciences				X				
Mathematics					X			
English						X		
Science						X		
4. Review the English Proficiency standards and revise as necessary.		X						

Objective 2: The Board of Education will provide leadership to help schools and school divisions eliminate the achievement gap between groups of students and increase the academic success of all students.

BACKGROUND: The Board of Education's priority for providing challenging academic standards is that they be student-centered, results-oriented, and supportive of local flexibility. This priority also provides the foundation of what the Board wants to achieve: a successful and accountable system of public education for all of Virginia's citizens.

As noted in the previous analysis of objective 1, activities related to review and adoption of the Standards of Learning may be more appropriate under that objective; some activities related to implementation of the Standards of Learning may be appropriate under this objective.

This objective specifically addresses the "achievement gap," the disparity in academic performance between groups of students. The Board has the opportunity to provide leadership to help schools and school divisions eliminate the achievement gap through greater use of disaggregated data, including test results and graduation rates by subgroups. The Board can emphasize the importance of using data throughout the public school system to manage school performance.

The term "achievement gap" addresses a measurable disparity in the academic performance of various groups of students that the Board is committed to addressing. At the same time, the Board wants to ensure that the top performing students continue to increase their academic achievement. Staff recommended replacing "academic success" with "academic achievement" since achievement can be more easily quantified and measured for all students.

STRATEGIES: (see next page)

Action	05	06	07	08	09	10	11	12
1. Support the establishment of data manager/ test coordinator positions to serve as a resource to principals and classroom teachers in analyzing and interpreting data for instructional purposes.			X	X	X	X	X	X
2. Support professional development and technical assistance for instructional staff, especially in low-performing schools.	X	X	X	X	X	X	X	X
3. Support a focus on civics, international education, technological literacy, and financial literacy to ensure the preparation of all students to be productive citizens.	X	X	X	X	X	X	X	X
4. Adopt policies that promote student preparation for college and work readiness in the 21st century.			X	X	X	X	X	X
5. Establish modified achievement standards for students with disabilities who can make significant progress but may not reach grade-level achievement standards within the same time frame as other students.	X	X	X	X	X	X	X	X
6. Support programs and initiatives to expand opportunities that students have to earn a high school diploma.	X	X	X	X	X	X	X	X
7. Establish the requirements for a technical diploma and an advanced technical diploma.			X	X	X			
8. Support opportunities for students to have access to college-level courses in high school, including Advanced Placement courses, International Baccalaureate courses, and dual enrollment courses.			X	X	X	X	X	X
9. Support strategies for closing the achievement gap between high- and low-performing groups of students.	X	X	X	X	X	X	X	X
10. Promote the identification of industry certification opportunities for CTE teachers and students who lack such credentials.	X	X	X	X	X	X	X	X

Action	05	06	07	08	09	10	11	12
Objective 2 continued: 11. Seek opportunities for assessing LEP students' English language proficiency and content knowledge in an equitable manner.			X	X	X	X	X	X
12. Support school divisions in conducting annual assessment in English language proficiency for all limited English proficient (LEP) students.			X	X	X	X	X	X
13. Review and revise the Regulations Governing Special Education Programs for Children with Disabilities.			X	X	X			
14. Review and revise the Regulations Governing Educational Services for Gifted Students.			X	X	X			
15. Establish policies that promote accountability for graduation and dropout rates for all student subgroups in schools and school divisions.			X	X	X	X	X	X
16. Provide incentives to schools and school divisions that succeed in closing the achievement gap and in improving student achievement.			X	X	X	X	X	X
17. Encourage school divisions to find innovative ways to bring foreign language study for all students, starting at the earliest elementary school level possible.			X	X	X	X	X	X
18. Recognizing divisions offering foreign languages to elementary school students.				X	X	X	X	X

Objective 3: The Board of Education will support accountability for all schools, focusing on assisting chronically low-performing schools and school divisions while recognizing all schools and school divisions as they move towards excellence.

BACKGROUND: A priority of the Board of Education is to support highly effective school accountability and improvement at the local school and at the division level as well. This has been a key area of action by the Board for many years and will continue to be one. There is a great deal of data available to measure the performance of the state's public schools and its students. The Board has a number of ways to support school accountability, including taking the lead in developing solutions for schools and school divisions that are not meeting accountability requirements.

As currently written, the objective focuses on chronically low-performing schools and does not reflect the Board's recognition of high-performing schools. Staff recommends that the objective be rewritten to include recognition of high performing schools. The Board may wish to consider strategies that provide incentives and recognize high-performing schools.

Because this objective somewhat duplicates objective 2, the Board may want to consider clarifying the different foci of these objectives (i.e., objective 2 focuses on students, objective 4 focuses on schools and divisions) through the strategies chosen to implement each objective respectively.

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Receive periodic reports of findings of academic review teams, review and adopt policies to address recommendations in team reports, and continue to refine the academic review and division level review procedures.	X	X	X	X	X	X	X	X
2. Promote technical assistance on research-based instructional interventions that help improve the academic achievement in schools that are low-performing and those that are identified as in need of improvement under the NCLB Act.	X	X	X	X	X	X	X	X
3. Continue to review and approve instructional interventions for implementation in low-performing schools.	X	X	X	X	X	X	X	X

Action	05	06	07	08	09	10	11	12
Objective 3 continued: 4. Support efforts to establish and maintain a state-level education information management system (EIMS) that will enable the department to meet increasing state and federal reporting requirements and enable stakeholders at all levels of education to make informed educational decisions based on accurate and timely information.	X	X	X	X	X	X	X	X
5. Establish and monitor the memorandum of understanding, or monitor the reconstitution of schools denied accreditation.	X	X	X	X	X	X	X	X
6. Establish and monitor the memorandum of understanding of school divisions in division-level academic review.			X	X	X	X	X	X
7. Establish recognitions and incentives for schools and school divisions that demonstrate significant improvement in student achievement, closing the achievement gap, and addressing overall educational excellence.			X	X	X	X	X	X
8. Recognize Highly Distinguished Title I schools and school divisions.			X	X	X	X	X	X

Objective 4: The Board of Education will work cooperatively with partners to help ensure that all young children are ready to enter kindergarten with the skills they need for success.

BACKGROUND: Research shows that from the time of birth to the first day of kindergarten, childhood development proceeds at a pace exceeding that of any subsequent stage of life. Efforts to understand this process have revealed the many remarkable accomplishments of the pre-school years, as well as the serious problems that confront some young children and their families. Striking disparities in what children know and can do are evident well before they enter kindergarten. This objective reflects the commitment of the Board to ensure that all children are adequately prepared for school when they enter it.

Leadership for and oversight of programs for pre-school-age children are predominately out of the purview and authority of the Board of Education. Nonetheless, the Board recognizes that getting pre-school age children ready to enter school is critically important to later success in school, as high quality intervention helps children to succeed. The strong link between a child's early learning environment and later school success is clear; therefore the Board of Education will seek new and effective ways to work cooperatively with other agencies and organizations concerned with the development of children of pre-school age.

Currently, JLARC is conducting a study, due out in January 2008, of the Virginia Pre-school Initiatives. This may be helpful to the Board in evaluating its actions under this objective.

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Implement the activities, terms, and conditions of the Board's NASBE grant to promote early childhood learning.		X	X	X				
2. Continue to collaborate with other entities in maintaining and enhancing learning standards for preschool education, preparation programs for preschool teachers, and professional development opportunities for preschool teachers.	X	X	X	X	X	X	X	X
3. Support the Virginia Preschool Initiative, the Title I Preschool Program, the Early Childhood Special Education Program, and the Even Start Family Literacy Program.	X	X	X	X	X	X	X	X

Action	05	06	07	08	09	10	11	12
Objective 4 continued: 4. Seek ways to cooperate with and encourage the Head Start programs.	X	X	X	X	X	X	X	X
5. Support a coordinated approach to delivering preschool programs in the Commonwealth.			X	X	X	X	X	X
6. Amend teacher licensure regulations to include the preschool add-on endorsement, and to increase the emphasis on preschool competencies for the PreK-3 and PreK-6 teacher licenses.			X					
7. Promote increased participation in and expansion of high quality preschool programs.		X	X	X	X	X	X	X
8. Develop a rubric to assist schools and school divisions in developing or selecting a high quality preschool curriculum.		X	X	X				
9. Collaborate with VCCS and SCHEV to promote consistent standards and a smooth transition to licensure for early childhood educators.				X	X	X	X	X

Objective 5: The Board of Education will establish policies that support the attainment of literacy skills of all students, kindergarten through grade 12.

BACKGROUND: This objective reflects the Board's understanding that certain basic skills (i.e., "literacy") are critical for all children if they are to perform successfully in school. The Board has little ability to directly assist teachers to improve the reading or "literacy" skills of children in Virginia. However, the Board does have the ability to influence policy in areas that affect the teaching and learning of reading, for example, teacher preparation and teacher licensure.

Current activities under this objective are focused on elementary level and adult initiatives. The Board may want to consider additional or revised activities that relate to all of the educational levels for which it is responsible.

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Implement the requirement for the reading assessment for initial licensure for elementary teachers, specified special education teachers, and reading specialists.	X	X	X	X	X	X	X	X
2. Provide leadership for preschool to adult literacy initiatives, including programs that address the needs of speakers of languages other than English.	X	X	X	X	X	X	X	X
3. Support teacher preparation programs and pre-service programs for teachers to improve their skills in teaching reading.	X	X	X	X	X	X	X	X
4. Support programs to promote improved adolescent reading in all content areas.			X	X	X	X	X	X
5. Host an adolescent literacy policy summit for educators, business leaders, legislators, and other stakeholders to raise awareness about the need for improved literacy achievement.			X					
6. Continue to establish and enhance policies in the SOQ and SOA to promote literacy.			X	X	X	X	X	X
7. Support initiatives that provide additional information to parents and teachers to help them identify areas of reading strength among students and target assistance to students in areas of greatest weakness.			X	X	X	X	X	X

Objective 6: The Board of Education will establish policies and standards that enhance the preparation, recruitment, and retention of educational personnel, including their meaningful, ongoing professional development.

BACKGROUND: In developing this objective, the Board of Education believed it could play an important role in coordinating and exploring effective strategies for ensuring quality and results, chiefly through efforts in principal training and professional development.

The direct influence that the Board can have on the recruitment, retention, and development of teachers is limited. In previous plans, activities that the Board has undertaken/approved under this objective have primarily focused on teachers and have not extended to school administrators, even though effective school leadership is an essential component of successful schools.

Opportunities are available to the Board for supporting professional development for educators, particularly at the leadership level within the schools. For example, the Board can develop partnerships with professional organizations that do provide ongoing training and development opportunities for their members, it can align its efforts with what is currently required of local school divisions, it can evaluate license renewal policy, and identify and disseminate national "best practices" for recruiting and retaining teachers. The Board may also want to consider partnering with teacher education schools to teach their students how to use data at the teacher and administrator levels.

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Support initiatives to increase the number of high quality teachers, especially for hard-to-staff schools, such as the mentoring programs in hard-to-staff schools, the Virginia Middle School Teacher Corps, and other incentive programs for qualified teachers.	X	X	X	X	X	X	X	X
2. Promote increasing the pool of teachers entering the profession by supporting strategies such as the career switcher program, the Teaching Scholarship Loan Program, and Teacher Cadet programs, to teach in general and critical shortage areas.	X	X	X	X	X	X	X	X

Action	05	06	07	08	09	10	11	12
Objective 6 continued: 3. Supporting incentives for National Board Certification that are aligned with efforts to help hard-to-staff schools including placing National Board Certified Teachers in such schools, and encouraging teachers from these schools to pursue National Board Certification.	X	X	X	X	X	X	X	X
4. Support ways to attract and retain career and technical education teachers whose training and expertise meet the demands of students and employers in the commonwealth.	X	X	X	X	X	X	X	X
5. Support executive education opportunities to assist established school administrators in providing skilled leadership in chronically low-performing schools.	X	X	X	X	X	X	X	X
6. Support the implementation of recommendations for the preparation of school leaders in conjunction with the Commonwealth Educational Roundtable.	X	X	X	X	X	X	X	X
7. Establish requirements for highly qualified paraprofessionals, general, and special education teachers and for professional development of teachers under NCLB and IDEA.	X	X	X	X	X	X	X	X
8. Adopt revisions to regulations governing preparation and licensure requirements for school personnel.	X	X	X					
9. Support professional development and technical assistance for educational personnel, working with professional education associations and teacher educators.	X	X	X	X	X	X	X	X
10. Support, in conjunction with local divisions, professional development strategies that the local schools will use to help ensure the development of highly qualified professional educational personnel and paraprofessionals.	X	X	X	X	X	X	X	X

Objective 7: The Board of Education will provide leadership in implementing the provisions of state and federal laws and regulations.

BACKGROUND: This is a critical function of the Board. Although the Board currently has no way to measure if regulations are put in place "smoothly and with minimal disruption to local divisions," the Board can consider processes that it can set up to help it evaluate the impact of specific regulations on local school divisions. Any such evaluation, however, will need to balance the benefit (quality education) of regulations with the cost (disruption to local school divisions).

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Continue to monitor progress of schools, divisions, and the state in meeting Adequate Yearly Progress (AYP) requirements.	X	X	X	X	X	X	X	X
2. Receive annual report cards on progress of students in meeting state standards, graduation rates, elementary school attendance rates, names of schools needing improvement, professional qualifications of teachers, percentages of students not tested, and other information as required by NCLB.	X	X	X	X	X	X	X	X
3. Support Virginia's participation in NAEP program in reading and math for 4th and 8th grades.	X	X	X	X	X	X	X	X
4. Support programs of technical assistance for schools identified as in the first and second year of school improvement.	X	X	X	X	X	X	X	X
5. Support procedures and disseminate via Web site notice to parents and the public of any pending corrective actions.	X	X	X	X	X	X	X	X
6. Support efforts to enlarge the pool of Supplemental Educational Services providers to provide remediation for low-performing students in Title I schools.	X	X	X	X	X	X	X	X

Action	05	06	07	08	09	10	11	12
Objective 7 continued: 7. Continue to assist school divisions in implementing charter schools and other public school choice options.	X	X	X	X	X	X	X	X
8. Develop and submit the state plan for the Carl D. Perkins Act.	X		X	X				
9. Receive reports on the Workforce Investment Act, as necessary.	X	X	X	X	X	X	X	X
10. Revise Regulations Governing Special Education Programs for Children with Disabilities to comply with new federal IDEA requirements.	X	X	X	X				
11. Carry out provisions of the 2007 appropriation act regarding the consolidation of the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-disabled at Hampton.	X		X	X	X	X	X	X
12. Review and revise annually Virginia's Consolidated State Application Accountability Workbook under NCLB.	X	X	X	X	X	X	X	X
13. Monitor the reauthorization of NCLB and take appropriate action as needed.	X	X	X	X	X	X	X	X

Objective 8: The Board of Education will provide leadership to help schools and school divisions ensure a safe and secure environment conducive to facilitating the teaching and learning process.

BACKGROUND: Everyone wants safe schools in which students, teachers and support staff can concentrate on learning and not have to worry about crime and violence. The Virginia Board of Education supports programs and policies for school-wide and division-wide safety and prevention plans that consistently address the needs of all students and encourage a safe and healthy learning environment. The Board is committed to policies that provide a positive learning environment for all children and teachers. Through partnerships, resources, data collection, and evaluation, the Board of Education can do much to address the needs of children as well as those who are providing services that protect our children.

STRATEGIES:

Action	05	06	07	08	09	10	11	12
1. Promote annual, and ongoing, staff training that address the health/safety needs of students and staff.	X	X	X	X	X	X	X	X
2. Build a foundation to work towards the goal of establishing a coordinated school health program.	X	X	X	X	X	X	X	X
3. Encourage school divisions to find innovative ways to keep students with behavioral challenges in school.	X	X	X	X	X	X	X	X
4. Support professional development and technical assistance in classroom management for instructional staff.	X	X	X	X	X	X	X	X
5. Develop and support programs and initiatives that emphasize prevention and creation of a positive school climate.	X	X	X	X	X	X	X	X
6. Provide incentives and rewards to schools that maintain low rates of, or reduce, disciplinary incidents, suspensions and expulsions, and threats to school safety.	X	X	X	X	X	X	X	X
7. Provide technical assistance for conducting threat assessments.	X	X	X	X	X	X	X	X
8. Promote the establishment of student assistance programs to provide comprehensive services to address the needs of students.	X	X	X	X	X	X	X	X
9. Collect and analyze discipline data and support the use of the Prevention through Information data system and programs.	X	X	X	X	X	X	X	X
10. Provide annual training to school divisions on discipline-related data collection to ensure accurate and consistent data collection, analysis, and statewide reporting.	X	X	X	X	X	X	X	X
11. Support opportunities for students with behavioral challenges to have access to high quality alternative programs in lieu of suspension or expulsion.	X	X	X	X	X	X	X	X

Assessment of Progress in Achieving Objectives

High achieving schools have much in common: challenging expectations for all students; clear, measurable goals; a consistent curriculum; and a staff that pores over data to see where teachers and students can improve. Such schools have teachers who are not only willing to push students but also come armed with up-to-date textbooks and other helpful resources.

With these imperatives in mind two years ago, the Board of Education set long-term objectives in its comprehensive plan of action for the years 2005 through 2010. Progress has been made to meet each of the eight objectives that were set forth in that plan.

An assessment of the Board's progress to date in meeting the 2005-2010 objectives is contained in Appendix A.

The gratifying student achievement and progress seen so far should not obscure the challenges that remain. More details about the various objective measures used to gauge student progress may be found in the Board of Education's Annual Report on the Condition and Needs of the Public Schools in Virginia, which is submitted annually in late November to the Governor, the General Assembly, and members of the public. For the latest report, see http://www.doe.virginia.gov/VDOE/VA_Board/home.shtml

Enrollment Projections for Virginia's Schools

The period covered by the comprehensive plan will be a time of great demographic change for Virginia as a whole, and especially for Virginia's public education system. The 2000 U.S. Census data show that Virginia was the 16th fastest growing state, with a population increase from 6.2 to 7.1 million in the 1990s. During that time period, over two-thirds of Virginia's population growth came from minority residents.

Dr. Michael Spar, research associate for the Demographics and Workforce Section of the Weldon Cooper Center at the University of Virginia, reported the following in the 2007 study, *Virginia School Enrollment Trends, 2007-2011*:

> Virginia's public elementary and secondary school membership soared to a new record in September 2006 when 1,200,407 students enrolled. Student enrollment was 6,239 more than the year before. But enrollment for the 2007-08 school year is forecast to be even higher, at 1,204,631 students. The newest projections from the Demographics and Workforce section of UVA's Weldon Cooper Center for Public Service show enrollment growing each year over the next five years, peaking at 1,232,264 students in 2011-2012, the last projection year. The total number of students attending public school in the Commonwealth will increase by nearly 32,000 between fall 2006 and 2011.

Digging deeper, the Weldon Cooper Center's research finds that the growth is centered in certain areas, while other areas are expected to shrink in enrollment. The variance in enrollment growth will have significant impact—a rippling effect on funding, school construction, school closings, consolidation of programs, the teaching workforce, and economic viability of localities. The report shows the following variance in the growth and reduction of enrollments across the state:

> Although enrollment is increasing statewide, only 63 of the state's 132 school divisions will enroll more students in five years. Divisions with the largest increases are located in, or adjacent to, the state's three major metropolitan areas, and include Loudoun (+21,197), Prince William (+15,984), Chesterfield (+3,727), Henrico (+3,394), Frederick (+1,981), Suffolk (+1,928), Spotsylvania (+1,781), Culpeper (+1,756), Stafford (+1,585), and Williamsburg-James City (+1,355). . . . Six school divisions projected to lose over 1,000 students in the next five years include Newport News (-1,044), Portsmouth (-1,249), Hampton (-1,612), Richmond (-2,132), Norfolk (-2,369), and Virginia Beach (-3,804).

The Weldon Cooper's report concludes by stating:

> Expenditures for education consume the largest share of most localities' budgets throughout Virginia. Changes in school-age population and school enrollment can, in the case of significant increases, place additional demands on teaching and administrative staffs, require new hiring, burden existing school facilities that may result in new school construction, and increase school transportation expenses. Additionally, the large increases forecast in grades K–5 will gradually move through the educational pipeline, placing demands on the upper grades in the next decade. Conversely, declines in the school-age population not only impact employment for school personnel, but may also reflect underlying demographic trends in a community suggesting impending shortages of available workers.

The full text of the Weldon Cooper school enrollment trends study may be viewed at: http://www.coopercenter.org/demographics/sitefiles/documents/pdfs/schoolforecasts/2007-enrollment_report.pdf

Important Demographic Trends for Virginia's Schools

The challenges for our public schools become more acute in light of Virginia's changing demographics, which show clearly that diverse population groups (i.e., limited English proficient and economically disadvantaged) are increasingly making up a larger proportion of the overall population. These students often require additional labor-intensive and cost-intensive services in order to be successful in school. Important demographic trends include the following that have powerful implications for our public school system.

Growth in the enrollment of Limited English Proficient (LEP) students:

- In Virginia, the Limited English Proficient population has doubled in just the past five years, and this trend is expected to continue. In 1994, Virginia's public schools enrolled a total of 20,000 LEP students. In 2006, that number had increased to 78,216.

- The latest data (2006-2007) show that more than 90 percent of Virginia's school divisions now have Limited English Proficient (LEP) students enrolled. While more than two-thirds of Virginia's LEP students are enrolled in a division in the northern Virginia region, pockets of sizable concentrations of LEP students dot many areas of the state.

- For 2006-2007, some divisions report the LEP students represent as much as 31 percent (Arlington) to 40 percent (Harrisonburg) of the total student population. Manassas City and Manassas Park have 34 percent and 36 percent, respectively.

Diversity of economic and educational opportunity factors:

- For the 2006-2007 school year, slightly more than one-third (33.5 percent) of the students in Virginia's public schools were eligible for free and reduced-price lunch. The percent varies widely across the school divisions, from a high of more than 75 percent to a low of 9 percent.

- Based on the latest census data (2000), more than 700,000 adults in Virginia are without high school credentials. Virginia has the 21st highest percentage of adults, 18.5 percent, without high school diplomas among the 50 states.

- On the other side of the economic spectrum, Virginia has the highest percentage of the workforce in science and engineering occupations of the 50 states. The relatively high percentage reflects Virginia's large knowledge-intensive sector.

- Clearly, this is a case of the educational haves and have-nots with profound implications for the economic well-being of our citizens and the state as a whole. The public schools have a huge role in providing the education necessary for equal opportunities for economic success.

Teacher preparation and teacher shortages:

- A perfect storm is brewing: the student population is going up while Virginia's ability to attract and hire teachers is going down.

- Data from Virginia's 2001-2002 teacher supply and demand survey concur with national projections: significant and growing shortages throughout the country, particularly in the endorsement areas of science, mathematics, foreign languages, and special education.

- Finding and retaining minority teachers continues to be a significant challenge statewide.

- The same teacher shortage areas show up year after year in the Virginia Department of Education's annual surveys, showing the persistent problem for staffing our public schools.

Additional Planning Documents

As noted in the above, the *Code of Virginia* requires the Board of Education to include in its comprehensive plan an assessment of the needs of public education and a plan to integrate educational technology into the Standards of Learning and the curricula, including career and technical education programs. Pursuant to that requirement, the Board of Education has adopted three documents in addition to its comprehensive plan: (1) the Board of Education's Annual Report on the Condition and Needs of the Public Schools in Virginia; (2) the Six-Year Plan for

Technology; and (3) the state plan for career and technical education. When viewed with the comprehensive plan contained herein, the documents provide a comprehensive view of the Board's priorities, the condition and needs upon which the priorities are based, and the future direction and needs of our system of public education.

The Board of Education's Annual Report on the Condition and Needs of the Public Schools in Virginia may be viewed at http://www.pen.k12.va.us/VDOE/VA_Board/home.shtml and the Six-Year Plan for Technology may be viewed at http://www.pen.k12.va.us/VDOE/Technology/OET/resources.shtml#etp. Information about Virginia's career and technical programs may be viewed at http://www.pen.k12.va.us/VDOE/Instruction/CTE/.

As required by the federal Carl D. Perkins Act, the Board of Education will review and revise the State Plan for Career and Technical Education during the 2007 and 2008 calendar years.

Key Policy Documents for Implementing Objectives

Of particular note, the Board of Education's priorities for Virginia's public schools are embedded throughout the provisions of the Standards of Quality, the Standards of Accreditation, and the Standards of Learning. These and other key policy and regulatory documents of the Board of Education may be viewed on the Department of Education's Web site: www.doe.virginia.gov. The *No Child Left Behind Act of 2001* also contains performance expectations for the state and for the school divisions and the individual schools within the divisions.

Appendix A:

Actions and Accomplishments to Meet Board of Education Objectives: 2005-2007

Section 22.1-253.13:6 of the *Code of Virginia* requires that the Board of Education's comprehensive plan contain "an assessment of the extent to which objectives are being achieved."

The following tables contain an outline of the activities and strategies that were set forth in 2005 by the Board of Education as its plan to meet objectives contained in the comprehensive plan for 2005-2010.

The tables show activities and strategies that are substantially underway or that have been completed between 2005 and September 2007. Also listed on the table are the various actions taken to accomplish each activity/strategy.

The check-mark (✓) for each activity/strategy indicates that the activity or strategy is either substantially underway or completed as of September 2007. As may be seen in the following tables, the Board of Education is on schedule to accomplish its objectives that it set in 2005.

Objective 1: The Board of Education will improve the quality standards for all public schools in Virginia.

Strategies/Activities	Complete/ In Process	Actions: 2005 to date
Review and revise the Standards of Quality: 2005, 2006, and 2008	✓	Reviewed the Standards of Quality and initiated discussion on possible areas for revision: April 2006 planning session Held 10 hearings across Virginia to receive public comments: 9/2006 Adopted revisions to the Standards of Quality and forwarded prescribed amendments to the 2007 General Assembly: 11/29/2006 Board's SOQ Committee examined current school safety initiatives and reviewed and discussed proposed amendments to the SOQ, which were subsequently adopted by the full Board.
Review and revise the Standards of Accreditation	✓	Expanded list of industry, professional or trade association examinations and occupational competency assessments to meet requirements of SOA (CTE/Advanced Mathematics Seal and student-selected verified credit): 2/23/2005; 11/29/2006 Reviewed/approved requests for waivers of provisions of the SOA: 2/23/2005 Reviewed and amended the SOA, effective September 2006 Initiated regulatory review process to revise certain sections of the SOA: 2/28/2007; proposed regulations anticipated for first review in the Fall 2007 to be final in 2008 Held forums on the proposed technical diplomas and proposed provisions for graduation rate formula in the SOA: 7/24/2007; 9/25/2007 Approved special provisions of SOA related to the use of test scores in calculating accreditation ratings for 2005-2006: 7/2005 Approved special provisions of SOA related to the use of test scores in calculating accreditation ratings for 2005-2006: 7/2005 Approved requests from local school boards for increased graduation requirements: 4/20/2005; 6/28/2006; 7/25/2007 Revised and updated the Guidance Document Governing Certain Provisions of the SOA: 9/27/2006 Approved an appeals process for instructional interventions to satisfy provisions of the SOA: 6/28/2007 Reviewed/Approved requests for Conditionally Accredited Rating from local divisions: 10/25/2006; 9/26/2007 Reviewed and adopted additions to the Board-approved list of instructional models/programs that include instructional methods to satisfy provisions for the SOA: quarterly

Objective 2: The Board of Education will provide leadership to help schools and school divisions close the achievement gap and increase the academic success of all students.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Review and revise the Standards of Learning: -Computer/Tech: 2005 -Fine Arts: 2006 -Foreign Language: 2007 -Health, Physical Educ, and Driver Educ: 2008 -History and Social Sciences: 2008 -Mathematics: 2009 -English: 2009 -Science: 2010	✓	Adopted revised Standards of Learning in the following subjects: • Computer Technology for Grades K-12: 6/25/2005 • Fine Arts: 4/26/2006 • Foreign Language: 2/28/2007 • English Language Proficiency: final adoption scheduled for fall 2007 Established objectives for Economics and Financial Literacy: 4/26/2006 Initiated revision of Health, Physical Education, and Driver Education: completion date is scheduled for early 2008 Initiated revision of History and Social Science SOL: completion date is scheduled for early 2008 Adopted SOL for new, optional high school mathematics course: 6/28/2007
Support professional development and technical assistance for instructional staff, especially in low-performing schools.	✓	Adopted list of approved textbook and instructional materials for mathematics, English and literature, and foreign language: 1/12/205
Support a focus on civics and financial literacy to ensure the preparation of all students to be productive citizens.	✓	Established objectives for Economics and Financial Literacy for middle and high school students: 4/26/2006 Participated as a member of the NASBE task force on civics education and Virginia's Commission on Civics Education: 2006
Review the English Proficiency Standards and revise as necessary.	✓	Revised SOL for English Language Proficiency: final adoption scheduled for mid-2007 Approved locally developed and/or selected English Language Proficiency assessments for LEP: 10/26/2005
Support programs and initiatives to expand opportunities for students to earn a high school diploma.	✓	Approved adjustments to cut scores for reading subtest of Stanford English Language Proficiency Test when used as a substitute for the Standards of Learning Grade 3 English test and the grades 5 and 8 Standards of Learning Reading tests: 5/25/2005 Set or reviewed cut scores for the following: • SOL End-of-course English: Reading and Algebra II tests: 11/30/2005 • SOL Mathematics and Reading tests in grades 3 through 8: 5/24/2006 • SOL Writing tests for grades 5 and 8: 5/25/2006 • Virginia Alternate Assessment Program: 7/26/2006; 6/28/2007 • Literacy and numeracy assessments required for Modified Standard Diploma: 7/26/2006

		Objective 2 continued: • Mathematics and reading for Virginia Grade Level Alternative (VGLA): 11/29/2006 • ACT: Plan, the TABE Algebra/Geometry test and the Cambridge International Examination when used as substitute tests: 4/26/2006 • SAT I Writing test when used as a substitute test for the SOL end-of-course English: Writing test: 2/28/2007 Approved the establishment of the Mountain Vista Governor's School: 1/11/2006 Approved a new graduation rate formula: 11/29/2006 Initiated a revision of the Regulations Governing Educational Services for Gifted Students: 6/28/2007 Board's Literacy Committee received detailed briefing on the proposed English Language Proficiency Standards, the Limited English Proficiency (LEP) Research Study, and members participated in meetings with USED regarding LEP assessments; sponsored panel discussions on successful practices, interventions, and literacy approaches at middle and high schools.
Establish policies regarding the new numeracy and literacy assessments for students with disabilities pursuing the modified standard diploma.	✓	Set cut scores for Literacy and numeracy assessments required for Modified Standard Diploma: 7/26/2006
Establish policies regarding the revised Virginia Alternate Assessment Program.	✓	Set cut scores for Virginia Alternate Assessment Program: 7/26/2006
Establish modified achievement standards for students with disabilities who can make significant progress but may not reach grade-level achievement standards within the same time frame as other students.	✓	Set cut scores for mathematics and reading for Virginia Grade Level Alternative (VGLA): 11/29/2006

Objective 3: The Board of Education will work to ensure meaningful, ongoing professional development for professional educational personnel.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Support professional development and technical assistance for professional educational personnel, working with professional education associations and teacher educators.	✓	Adopted criteria for implementing experiential learning credits for alternate route applicants seeking initial licensure: 9/21/2005 Established designations on licenses to reflect stages in the professional development of teachers and promoted continuing growth and career paths as educators: 3/29/2007
Promote the identification of industry certifications opportunities for all teachers who lack such credentials.	✓	Expanded list of industry, professional or trade association examinations and occupational competency assessments to meet requirements of SOA (CTE/Advanced Mathematics Seal and student-selected verified credit): 2/23/2005; 11/29/2006
Support, in conjunction with local divisions, professional development strategies that the local schools, especially those in small school divisions, will use to help ensure the development of highly qualified professional educational personnel and paraprofessionals.	✓	Revised requirements for renewing a license. • Renewal activities must be based on an individualized professional development plan that includes ongoing, sustained, and high-quality professional development. • Definitions of the renewal options have been incorporated in the regulations. Board's Literacy Committee sponsored the statewide Literacy Policy Summit for key policymakers in local divisions: Closing the Achievement Gap: A Focus on Adolescent Literacy: 5/1/2007

Objective 4: The Board of Education will support accountability for all schools, with a focus on assisting chronically low-performing schools and school divisions.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Receive periodic reports of findings of academic review teams, review and adopt policies to address recommendations in team reports, and continue to refine the academic review and division level review procedures.	✓	Examined findings of the school-level academic review process: 7/27/2005 Promulgated regulations for conducting division-level academic reviews: 10/25/2006 Reviewed and modified the school-level academic review process: 9/21/2005 Board's Committee on School and Division Accountability advised the Board on findings: review process for alternative accreditation plans for special purpose schools, reviewed the SOA guidance document; requests for the accreditation rating of Conditionally Accredited; and the Memorandum of Understanding framework.
Adopt strategies for closing the achievement gap between high- and low-performing groups of students.	✓	Adopted report on regional alternative education programs: annually Adopted the Incentive Program to encourage and recognize school performance and competence to excellence: 7/25/2007
Promote technical assistance on research-based instructional interventions that help improve the academic achievement in schools that are low-performing and those that are identified as in need of improvement under the NCLB Act.	✓	Met with Petersburg City school officials to examine and discuss status of the Memorandum of Understanding (MOU): 10/25/2007; 11/29/2006; 2/27/2007; 5/30/2007; 7/24/2007 Examined the progress of Sussex County schools in meeting the MOU goals agreed to by the respective boards: 10/25/2007; 11/29/2006; 2/27/2007; 5/30/2007; 7/24/2007 Released Lee County (11/29/2006) and Richmond City (2/28/2007) from the division-level academic review process Board's Literacy Committee received detailed briefings on the proposed English Language Proficiency Standards, the Limited English Proficiency (LEP) Research Study, and members participated in meetings with USED regarding LEP assessments; sponsored panel discussions on successful practices, interventions, and literacy approaches at middle and high schools.
Continue to review and approve instructional methods and/or models for implementation in low-performing schools.	✓	Adopted report on state-funded remedial programs: annually Added qualified providers or deleted providers no longer qualified on at least a quarterly basis. Added qualified instructional methods and deleted those no longer qualified: quarterly.
Address measures to be taken in schools whose accreditation is denied.	✓	Approved alternative accreditation plans for schools in Chesterfield, Hampton, Henrico, and Richmond City: 11/30/2005; extended approval for Hampton and Henrico: 9/27/2006;

		Objective 4 continued: Approved additional request from Richmond City (Richmond Alternative School): 5/30/2007 Approved withholding accreditation rating of Nandua High School and Oak Grove Elementary for test security violations: 9/21/2005
Support programs that assist schools and students meet performance expectations.	✓	Revised the Remediation Recovery Guidelines: 10/26/2005 Clarified pass rates required for the new reading and mathematics tests in grades 4, 6, and 7 for the 2006-2007 accreditation ratings: 2/15/2006

Objective 5: The Board of Education will work cooperatively with partners to help ensure that young children are ready for school.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Establish academic standards to support preparation for pre-school students to be ready to successfully enter into kindergarten.	✓	Received and implemented a grant from the National Association of State Boards of Education (NASBE) for Early Childhood Education: 6/2006- present Adopted approved program regulations that established an add-on endorsement for Early Childhood for Three- and Four-Year-Olds: 3/29/2007
Continue to cooperate with other entities involved in developing and implementing *Virginia's Foundation Blocks for Early Learning: Standards for Literacy and Mathematics*.	✓	Supported Department of Education staff on the following preschool standards: • Virginia's Foundation Blocks for Early Learning: Standards for Literacy and Mathematics: 1/12/2005 • Virginia's Foundation Blocks for Early Learning: Standards for Science, History and Social Science, and Personal and Social Development: 10/26/2005 • Virginia's Foundation Blocks for Early Learning: Standards for Physical and Motor Development and for Personal and Social Development: 2/28/2007 • Preschool Curriculum Review Rubric and Planning Tool: 7/25/2007
Support the Virginia Preschool Initiative.	✓	Participated as a member of NASBE's national study group on creating high quality early learning environments Board's Quality Preschool Program Committee examined the Virginia Preschool Initiative, the Virginia Preschool Initiative Start-Up and Expansion Grants, and discussed the Early Childhood Alignment Project: 9/26/2006 NASBE grant committee members observed Virginia Preschool Initiative classrooms in Arlington: 2/2007
Support the Title I Preschool programs and Early Childhood Special Education Program.	✓	Participated in meetings and activities of the Governor's Start Strong Council Quality Preschool Committee received briefing and discussed Title I preschool programs and Early Childhood Special Education and technical assistance: 2006
Support the Even Start Family Literacy Program.	✓	Participated in meetings and activities of the Governor's Start Strong Council: on-going Board's committee participated in the Alignment Project for Virginia; discussed Benchmarks for Smart Beginnings, early learning program standards, and professional competencies for Smart Beginnings: on-going
Seek ways to cooperate with and encourage the Head Start programs.	✓	Participated in meetings and activities of the Governor's Start Strong Council: on-going

Objective 6: The Board of Education will assist teachers to improve the reading skills of all students, kindergarten through grade 12.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Ensure the communications and literacy skills of teachers by implementing the requirement for the reading assessment for initial licensure for teachers in the early grades.	✓	Set cut score for the Virginia Reading Assessment test: 7/27/2005
Provide leadership for preschool to adult literacy initiatives, including programs that address the needs of speakers of languages other than English.	✓	Sponsored the Literacy Summit attended by local division policymakers across Virginia: 5/1/2007
Support teacher preparation programs and pre-service programs for teachers to improve their skills in teaching reading.	✓	Board adopted approved program regulations including professional studies for the following competency areas: • Human growth and development; • Curriculum and instructional procedures; • Foundations of Education; and • Reading. 3/29/2007 Established revised professional studies requirements for licensure to include six semester hours in reading: 3/29/2007

Objective 7: The Board of Education will continue efforts to enhance the training, recruitment, and retention of highly qualified teachers, educational support personnel, and administrators, with a focus on the needs of "hard to staff" schools.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Support initiatives to increase the number of high quality teachers, especially for hard-to-staff schools, such as the mentoring programs in hard-to-staff schools, the Virginia Middle School Teacher Corps, and other incentive programs for qualified teachers.	✓	Developed and adopted policies to be implemented in the Virginia Approved Programs for the Virginia Communications and Literacy Assessment, 11/30/2005 Examined and revised Praxis I cut scores as recommended by ABTEL: 2/23/2005 Set cut scores for the Virginia Communication and Literacy Assessment: 3/22/2006 Acted on recommendations of the Board's special committee on teacher licensure assessments and revised licensure regulations: 2005 Approved Continuing Program Status or Approval with Stipulations for several college and university teacher training programs: ongoing
Support executive education opportunities, such as the Turnaround Specialist Program to assist established school administrators in providing skilled leadership in chronically low-performing schools.	✓	Supported Competitive School Division Grants for Leadership Development Preparation Programs: awarded by the Department of Education for fiscal years 2004-2005 and 2005-2006
Support the implementation of recommendations for the preparation of school leaders outlined by the Commission to Review, Study and Reform Educational Leadership.	✓	Established and set cut score for the school leaders licensure assessment; 2005 Established new licensure regulations including two levels for the administration and supervision prek-12 endorsement. Level I is required to serve as a building-level administrator or central office supervisor, and Level II is an optional endorsement to which an experienced building-level administrator may aspire: 3/29/2007 Established via licensure regulations four options to become eligible for the administration and supervision endorsement: 3/29/2007

Objective 7 continued: Ensure that incentives for National Board Certification are aligned with efforts to help hard-to-staff schools including placing National Board Certified Teachers in such schools, encouraging teachers from these schools to pursue National Board Certification, and introducing a service component in state school improvement efforts into state supports for National Board teachers.	✓	Department of Education utilized the Board-approved guidelines for awarding National Teacher Certification grant funding; ongoing Established in licensure regulations designations that will reflect stages in the professional development of teachers and promote continuing growth and career paths as educators; new provisions recognize National Certified Teachers as eligible for Teacher as Leader designation; other provisions in new regulations recognize the National Board Certified teacher in the credentialing process: 3/29/2007
Support full compliance with NCLB and IDEA requirements for highly qualified paraprofessionals, general, and special education teachers and for professional development of teachers.	✓	Reviewed and aligned "Highly Qualified" policies to requirements for special education teachers under IDEA: 4/20/2005
Promote increasing the pool of teachers entering the profession through the career switcher program to teach in general and critical shortage areas.	✓	Reviewed and aligned "Highly Qualified" policies to requirements for special education teachers under IDEA: 4/20/2005
Support strategies for recruitment and retention of highly qualified teachers through the Teacher Quality Enhancement grant.	✓	Adopted a High Objective Uniform State Standard of Evaluation (HOUSSE) for Visiting International Faculty (VIF) cultural exchange teachers: 3/29/2007
Adopt revisions to regulations governing preparation and licensure requirements for school personnel.	✓	Adopted new provisions for the Regulations Governing the Review and Approval of Education Programs in Virginia: 2005, 2006, Final on 3/29/2007 Adopted new provisions for the Regulations Governing the Licensure of School Personnel: 2005, 2006, Final on 3/29/2007
Support ways to attract and retain career and technical education teachers whose training and expertise meet the demands of students and employers in the Commonwealth.	✓	Adopted transitional state plan for career and technical education; final plan will be developed in consultation with academic and career and technical education teachers, faculty, and administrators; career guidance and academic counselors: 3/29/2007 Participated in Southern Regional Education Board (SREB) High Schools That Work conference: 2006

Objective 8: The Board of Education will provide leadership for implementing the provisions of state and federal laws and regulations smoothly and with minimal disruption to local divisions.

Strategies/Activities	Complete/In Process	Actions: 2005 to date
Continue to monitor progress of schools, divisions, and the state in meeting Adequate Yearly Progress (AYP) requirements.	✓	Adopted amendments to Virginia's Consolidated State Application Accountability Plan under NCLB: 2005, 3/22/2006; 10/25/2006; 1/10/2007 Received status reports on the requests for waivers and amendments under NCLB: 4/20/2005; 5/25/2005; 6/22/2005; 5/24/2006; 6/28/2006 Requested additional flexibility in the inclusion of the performance of students with disabilities in the calculation of Adequately Yearly Progress: 5/25/2005 Adopted a response to the NCLB compliance monitoring report on highly qualified teachers: 9/27/2006 Adopted a plan to identify provisions of NCLB that are not integral or necessary to Virginia's statewide educational program and the waiver and exemption requests made by the Board: 9/27/2006
Receive annual report cards on progress of students in meeting state standards, graduation rates, elementary school attendance rates, names of schools needing improvement, professional qualifications of teachers, percentages of students not tested, and other information as required by NCLB.	✓	Annual School Report Card reported on Web site; ongoing briefings with Board committees as requested: ongoing Adopted 2006 Annual Report on the Condition and Needs of Public Schools in Virginia: 11/29/2006 Initiated process for updating the Comprehensive Plan for 2007-2012: 3/29/2007
Support the administration of new SOL tests annually in English (reading/language arts) and in mathematics for grades 3 through 8.	✓	Tests administered in 2006-07 for the first time, as required by NCLB, in grades 4, 6, and 7.
Support Virginia's participation in NAEP program in reading and math for 4th and 8th grades.	✓	Virginia is participating in the NAEP assessments on an ongoing basis each year and results are reported to the public when available.
Support school divisions in conducting annual assessment in English language proficiency for all limited English proficient (LEP) students.	✓	Advocated for student-centered assessments of LEP students during multiple meetings and correspondence with USED officials and congressional delegation: ongoing

Objective 8 continued Support programs of technical assistance for schools identified as in the first and second year of school improvement.	✓	Promulgated regulations for conducting division-level academic reviews: 10/25/2006 Reviewed and modified the school-level academic review process: 9/21/2005
Support procedures to disseminate via the Web site notices to parents and the public of any pending corrective actions, as required by NCLB.	✓	Updated School Report Card published by the Department of Education on the Web site: 9/2006
Support efforts to enlarge the pool of Supplemental Educational Services providers to provide remediation for low-performing students in Title I schools.	✓	Reviewed and adopted additions and deletions to the Board-approved list of Supplemental Educational Services Providers under NCLB: quarterly Examined a report on the implementation of the Supplemental Educational Services requirement under NCLB: 2/28/2007 Adopted an appeals process for Supplemental Educational Services providers: 6/28/2007
Continue to assist school divisions in implementing charter schools and other public school choice options.	✓	Reviewed annual status report on public charter schools in Virginia: annually
Review and update the state plan for the Carl D. Perkins Act.	✓	Received a report from the Virginia Advisory Committee for Career and Technical Education: annually Adopted the 2007-2008 transitional state plan for the Carl D. Perkins Career and Technical Education Act of 2006: 3/29/2007
Receive reports on the Workforce Investment Act programs, as necessary.	✓	Received a report from the Virginia Advisory Committee for Career and Technical Education: annually Received statewide performance report for Career and Technical Education and the Virginia Community College System, as a Sub-recipient of Perkins Funds from the Department of Education
Include industry certification requirements in the teacher licensure regulations.	✓	Established provisions in new teacher licensure regulations requiring industry certification based upon the prescribed standard or examination, if applicable, for endorsement: 3/29/2007
Revise *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* to comply with new federal requirements under the Individuals with Disabilities Education Act as amended in 2004.	✓	Regulatory revision process initiated: 10/25/2006; proposed regulations are expected to be presented for first review in July 2007.

Objective 8 continued: Carry out provisions of the 2005 appropriation act regarding the consolidation of the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-disabled at Hampton.	✓	Received updates and briefings on the status of the Virginia Schools for the Deaf and Blind at Hampton and Staunton: 4/20/2005 Conducted the business of the Virginia Schools for the Deaf and Blind Foundation: annually Reviewed proposals submitted under the Public-Private Education Facilities and Infrastructure Act (PPEA) for the consolidation of the Virginia Schools for the Deaf and Blind: 7/27/2005 Toured both campuses and held public hearings: 8/2005 Reviewed options prepared by Trammell Crow under the PPEA related to the consolidation of the Virginia Schools for the Deaf and Blind: 9/21/2005 Authorized the Virginia Department of General Services to proceed with the design work to consolidate the Virginia Schools for the Deaf and Blind: 9/27/2006 Enter into a conventional design contract and a construction manager at risk contract with assistance from the Department of General Services: 5/30/2007

Board of Education Agenda Item

Item: H. **Date:** September 26, 2006

Topic: First Review of the 2007 Annual Report on Regional Alternative Education Programs

Presenter: Ms. Diane L. Jay, Associate Director, Office of Program Administration and Accountability

Telephone Number: (804) 225-2905 **E-Mail Address:** Diane.Jay@doe.virginia.gov

Origin:

_____ Topic presented for information only (no board action required)

_X_ Board review required by
- _X_ State or federal law or regulation
- ____ Board of Education regulation
- ____ Other: _____

_X_ Action requested at this meeting ____ Action requested at future meeting:

Previous Review/Action:

_X_ No previous board review/action

____ Previous review/action
date _____
action _____

Background Information: Section 22.1-209.1:2 of the *Code of Virginia* requires that the Board of Education provide an annual report to the Governor and the General Assembly on the effectiveness of the Regional Alternative Education Programs. The 1993 General Assembly approved legislation and funding to create regional pilot programs to provide an educational alternative for certain students who have a pending violation of school board policy, have been expelled or suspended on a long-term basis, or are returning from juvenile correctional centers. A formula based on staffing patterns and the composite index of local ability-to-pay determines continuation funding for the programs.

Summary of Major Elements: One hundred fourteen (114) school divisions participate in the regional alternative education programs. During 2006-2007, 4,205 students were served. An annual report that summarizes the status and effectiveness of the regional programs is attached.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the 2007 Annual Report on Regional Alternative Education Programs pursuant to §22.1-209.1:2, *Code of Virginia*.

Impact on Resources: None.

Timetable for Further Review/Action: Following approval, the report will be forwarded to the Governor and the General Assembly as required by §22.1-209.1:2, *Code of Virginia*.

VIRGINIA BOARD OF EDUCATION

2007 Annual Report

REGIONAL ALTERNATIVE EDUCATION PROGRAMS

PRESENTED TO

GOVERNOR TIMOTHY M. KAINE
AND THE
VIRGINIA GENERAL ASSEMBLY

September 26, 2007

PREFACE

Section 22.1-209.1:2 of the *Code of Virginia* requires that a report be provided annually by the Board of Education to the Governor and the General Assembly on the effectiveness of the Regional Alternative Education Programs. The primary objectives of this evaluation are as follows:

1. Provide a general overview of the programs, student populations, staff, program resources and support, and parental and community support.
2. Review the program administrators' perceptions of the adequacy of the programs.
3. Evaluate the performance of the programs and students.

The staff member assigned to the preparation of the report was Diane L. Jay, associate director, Office of Program Administration and Accountability, Division of Instruction, Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23218-2120. Questions concerning the report should be directed to Ms. Jay at (804) 225-2905 or by e-mail at Diane.Jay@doe.virginia.gov.

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EXECUTIVE SUMMARY

The evaluation was conducted on Virginia's 29 regional alternative education programs. These programs were established by the General Assembly in 1993-1994 with the intent of involving two or more school divisions working in collaboration to establish options for students who have a pending violation of school board policy, have been expelled or suspended on a long-term basis, or are returning from juvenile correctional centers. Section 22.1-209.1:2 of the *Code of Virginia* requires that a report be provided annually by the Board of Education to the Governor and the General Assembly on the effectiveness of the regional alternative education programs.

These regional alternative education programs are designed to meet the specific individual needs of students assigned to the programs. While there is some variation in programs, the legislation outlines the following components:

- an intensive, accelerated instructional program with rigorous standards for academic achievement and student behavior;
- a low pupil-teacher ratio to promote a high level of interaction between the student and teacher;
- a plan for transitioning the enrolled students into the relevant school division's regular program;
- a current program of staff development and training;
- a procedure for obtaining the participation and support from parents as well as community outreach to build school, business, and community partnerships; and
- measurable goals and objectives and an evaluation component to determine the program's effectiveness.

The number of students enrolled has increased from 217 students in four regional programs in 1993-1994 to 4,205 students in 29 programs during 2006-2007. The state funding level has increased 418 percent during this same time period. Conclusions related to the program, services, and policies for the 2006-2007 school year follow:

- A majority of program administrators reported academic improvement in their responses regarding perceived changes in student academic performance.
- The program administrators reported decreased violence, firearms, and weapons possession incidences for students while in the program as well as a decrease in substance abuse and property offenses.
- Program administrators reported ratings of good or excellent for parental involvement, technology, staff development, resources, discipline policies, selection process, student assessments, student services, and the academic program.
- Of the 293 teachers employed, 95 percent are licensed. Student-to-teacher ratios range between 4:1 and 15:1.

- The Standards of Learning (SOL) tests in English and mathematics were taken by 1,916 alternative education students during the 2006-2007 school year. These students achieved a 48 percent pass rate on the English SOL and a 33 percent pass rate on the mathematics SOL.
- The dropout rate for these students is 4.9 percent. The expulsion or dismissal rate is 7.6 percent.
- Of the students who were not eligible to graduate in the 2006-2007 school year, approximately 70 percent remained in school at the end of the 2006-2007 school year. Of these students, 48.9 percent plan to return to their regular school beginning in 2007-2008, and 21.3 percent will remain in the alternative education program.

Overall, the regional alternative education programs appear to be achieving their program purposes. The return on the public's investment for regional alternative education programs appears favorable.

CHAPTER ONE

Purpose

Virginia's regional alternative education programs are established to provide options for students who no longer have access to traditional school programs because they were suspended for violations of school board policy. Assignment to these programs include violations related to weapons, drugs or alcohol, intentional injury, chronic disruptive behavior, theft, verbal threats, malicious mischief, chronic truancy, vandalism, and other serious offenses. These programs also accommodate students returning from juvenile correctional centers or those who are otherwise assigned by the school divisions.
The evaluation examined the 29 programs in operation during the 2006-2007 school year. A total of 114 school divisions worked in collaboration to form these 29 programs; some of the divisions have multiple subprograms and sites. A listing of the programs and participating school divisions is provided in Attachment A1.

Objectives and Scope of Evaluation

Section 22.1-209.1:2 of the *Code of Virginia* requires that a report be provided annually by the Board of Education to the Governor and the General Assembly on the effectiveness of the regional alternative education programs. The primary objectives of this evaluation are as follows:

1. Provide a general overview of the programs, student populations, staff, program resources and support, and parental and community support;
2. Review the program administrators' perceptions of the adequacy of the programs; and
3. Evaluate the performance of the programs and students.

The goals of the 29 regional alternative education programs are similar in that they are all designed to provide alternative and experiential learning opportunities for their students. They serve students who have been assigned to the school by a local board of education because: (1) the traditional school systems are not equipped to address their needs; and (2) the alternative education programs can provide a wide variety of student services and educational approaches that are tailored to these needs. While the general goals among programs are similar, there are also differences such as:

- grade levels served;
- size of the student bodies;
- characteristics of the students enrolled;
- characteristics of the student enrollment expectations (e.g., very short-term versus long-term);
- educational approaches and priorities; and
- program resources available.

Data Sources

The information, observations, and findings in this summary report are primarily based on the following sources:

- Information collected by the Virginia Department of Education through an annual information data collection instrument and supplemental information provided with these reports. In June 2006 the reports were submitted by each of the 29 programs for the 2006-2007 school year.
- Follow-up communications with program administrators and personnel.
- Relevant information included in previous regional alternative education program evaluations published by the Virginia Department of Education.

CHAPTER TWO

Background and Summary Information

In 1993, the General Assembly directed the Board of Education to establish and implement four regional pilot projects to provide an educational alternative for certain students in violation of school board policy. The General Assembly subsequently provided state funding, augmented for several years by federal funds, to make regional alternative education programs available on a statewide basis. A Virginia Department of Education formula based on staffing patterns and the composite index of local ability to pay determines state funding. No local matching funding is required; however, local school divisions sometimes use local and federal monies to augment these programs by providing in-kind support for such items as instructional materials, additional staff, pupil transportation, and facilities.

Alternative education programs are designed to meet the specific individual needs of students assigned to the programs. While there is some variation in programs, the legislation outlines the following components:

- an intensive, accelerated instructional program with rigorous standards for academic achievement and student behavior;
- a low pupil-teacher ratio to promote a high level of interaction between the student and teacher;
- a plan for transitioning the enrolled students into the relevant school division's regular program;
- a current program of staff development and training;
- a procedure for obtaining the participation and support from parents as well as community outreach to build school, business, and community partnerships; and
- measurable goals and objectives and an evaluation component to determine the program's effectiveness.

The delivery of services includes traditional and non-traditional forms of classroom instruction, distance learning, and other technology-based educational approaches. Delivery of services also includes day, after-school, and evening programs. Alternative education centers have flexibility with regard to their organizational structure, schedule, curriculum, programs, and disciplinary policies. While the centers may differ in method of delivery, the services they provide typically fall into the following categories:

- educational (core subject instruction, vocational, remediation, tutoring);
- counseling (individual, group, family);
- social skills training;
- career counseling (transitioning to the world of work, job shadowing, mentoring, work/study agreements);
- technology-related education (direct instruction, Internet research, keyboarding);
- conflict resolution and mediation; and
- drug prevention education.

CHAPTER THREE

Regional Alternative Education Program Overview

This chapter provides an overview of program and student trends, program purposes, organization, innovative practices, reasons for student enrollment, student selection processes, academic offerings, student services, student assessments, and general and discipline policies of the regional alternative education programs.

A. Characteristics of Programs and Student Population

Statistical Overview – Of the 29 regional programs, all except one serve students in grades 9-12. The remaining program serves only middle school students in grades 6-8. Eighty-six (86) percent of the programs also serve grades 7-8; and 72 percent also serve 6th grade students. Three programs also serve students in grades K-5. Additionally, 62 percent of the programs report serving General Educational Development (GED) certificate students.

The programs report having 2,424 assigned slots and serving 4,205 students during the 2006-2007 school year. Since students are assigned for short periods of time in some programs (e.g., a week in some cases), multiple students can be served per slot. Attachment A2 provides a more detailed overview of the 29 programs.

Over the first four years of Virginia's regional alternative education program, the number of programs grew rapidly from the four pilot sites in 1993-1994 to 29 programs by 1996-1997. Since that time, the number of programs has remained constant. A new regional program was approved by the General Assembly in 2000-2001 bringing the number of programs to 30. In 2003-2004, one regional program dissolved, thus reducing the number of programs to 29. During this same period, state funding increased from the initial General Assembly appropriation of $1.2 million for 1993-1994 to a total state funding level of slightly over $6.2 million for 2006-2007. Programs are permitted to receive additional funding and in-kind support from other sources although no local match is required.

The number of students enrolled increased from 217 students in four regional programs in 1993-1994 to 4,205 students in 29 regional programs in 2006-2007. The state funding level has increased by 418 percent during this same time period.

Table 1 summarizes trends for the number of regional alternative education programs in Virginia, state funding levels for these programs, and numbers of students served since the 1993-1994 school year.

Table 1.
Trends in Regional Alternative Education Programs

School Year	Number Of Programs [1]	State Funding [2]	Number of Students Served
1993-1994	4	$1,200,000	217
1994-1995 [2]	13	$1,200,000	849
1995-1996 [2]	19	$1,200,000	1,550
1996-1997	29	$4,142,000	2,297
1997-1998	29	$3,716,652	2,350
1998-1999	29	$4,431,089	3,255
1999-2000	29	$4,484,123	3,494
2000-2001	30	$5,766,626	3,347
2001-2002	30	$5,386,590	3,895
2002-2003	30	$5,386,590	3,509
2003-2004	29	$5,210,891	3,534
2004-2005	29	$5,486,348	3,903
2005-2006	29	$5,561,410	4,155
2006-2007	29	$6,220,518	4,205

Note [1]: Some data refer to sites and some refer to programs.

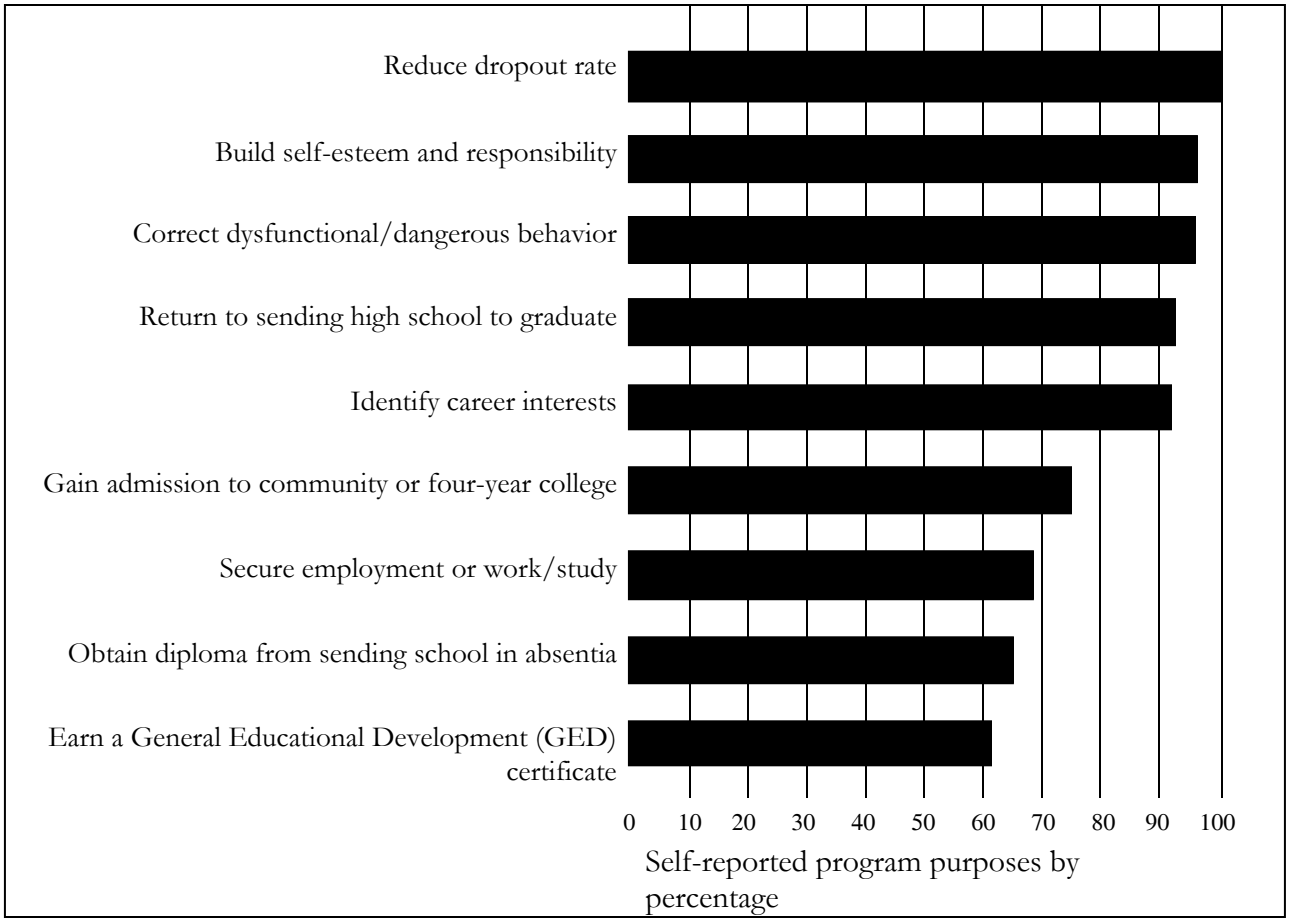
Note [2]: Federal funds were used to supplement state funds to expand the program during the 1994-1995 and 1995-1996 school years.

Program Purpose – The regional alternative education programs are designed to meet the specific individual needs of students assigned to the programs. These needs dictate a different set of "program purposes," or objectives than would be encountered in the traditional school system. As part of the 2006-2007 data collection effort for the evaluation, administrators were asked to identify the objectives most appropriate for the various sites operating within their programs. The "program purposes" reported by the majority of programs are to:

- reduce the dropout rate;
- build self-esteem and responsibility;
- correct dysfunctional and/or dangerous behavior;
- return students to sending high school to graduate; and
- identify career interests.

The list of program purposes, as reported by the responding program administrators, is portrayed in Figure 1.

Figure 1.
Purpose of Program



Program Organization and Innovative Practices – The programs included in this evaluation reflect a wide variety of educational, operational models, and processes. Most programs report operating between 9 and 10 months a year, but the range is 9 to 12 months. Over 30 percent of the programs offer morning and evening classes. Over 80 percent organize classes by subject or course, and 50 percent organize classes by grade level. Over 80 percent of the programs report that students work independently on computer-based curricula.

Program administrators were asked to identify innovative practices they believe to have been most effective in their program. Their responses included: 1) differentiated or individualized instruction; 2) anger management counseling; 3) computer-assisted instruction; 4) small group learning; 5) small student-to-teacher ratio; 6) psychological counseling; 7) support of parents, guardians, and resource officers; and 8) service learning activities.

Reasons for Student Enrollment and Student Selection Process – Students are typically assigned to regional alternative education programs because they have received long-term suspensions, are returning from juvenile correctional centers, or are otherwise identified by the school divisions to be best served by these programs. Consequently, these programs are structured to address the special needs of these students. Table 2 provides insight as to the primary reasons leading to student enrollments for the 2006-2007 school year.

Table 2.
Reasons for Enrollment in Regional Alternative Education Programs 2006-2007

Reasons for Enrollment	Total	Percent
Suspensions for violation of School Board Policy [2]	4,102	97.6 [1]
Chronic Disruptive Behavior	781	19.0 [3]
Drugs or alcohol	502	12.2 [3]
Intentional Injury	310	7.6 [3]
Weapons	243	5.9 [3]
Theft	36	0.9 [3]
Combination of above	502	12.2 [3]
Other [4]	2,374	57.9 [3]
Released from youth correctional centers	93	2.2 [1]
Total Suspensions and Released from Youth Correctional Centers	**4,205**	**100**

Note [1]: Percentage of 4,205 (the total number of students served).

Note [2]: Included pending violations.

Note [3]: Percentage of 4,102 (the total number of students suspended for violation of policy).

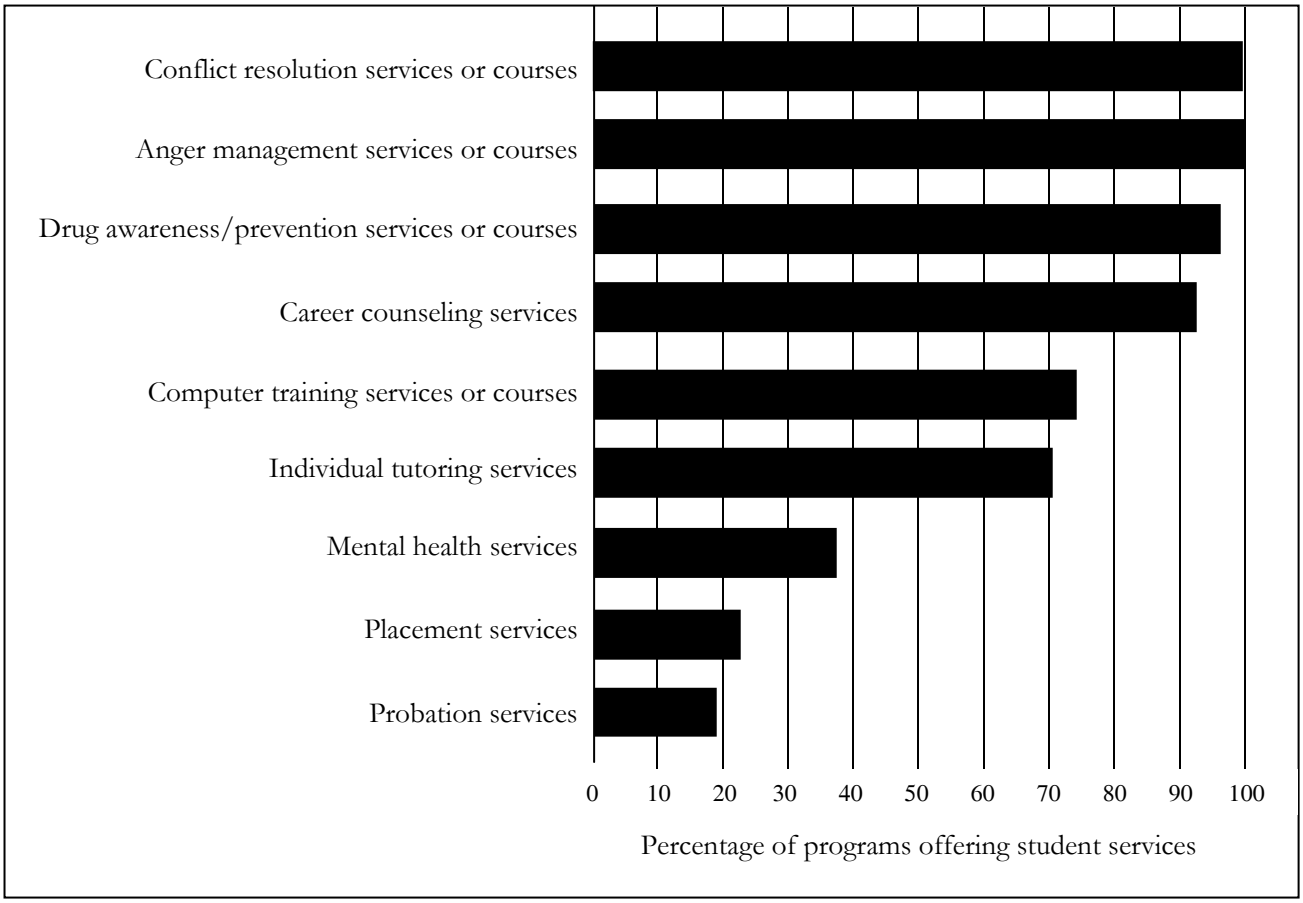
Note [4]: Verbal threats, malicious mischief, bomb threats, destruction of property, chronic truancy, vandalism, and other serious offenses.

There is no standardized student selection process. The student selection process includes guidelines and criteria for admittance, and denial of admission varies from program-to-program. Most of the programs report that students were assigned to them "as a last chance option." All of the program administrators report that parents and students are required to participate in an interview prior to an admission decision. About 83 percent of the administrators indicate that they have the option to deny admission, and almost 80 percent state that students and parents have to sign a contract (e.g., commit to the program) before admission.

Academic Offerings and Student Services – An intense, accelerated instructional program with rigorous standards for academic achievement and student behavior is a legislative requirement of the regional alternative education programs. The range of students served (e.g., K-12 grade levels, a wide variety of behavioral issues, a wide range of cognitive capabilities) and academic approaches used produce a wide spectrum of courses offered,

academic initiatives, and student services. At a general level, there are many core academic offerings and student services common to these regional alternative education programs. All 28 programs that serve high school students offer standard diploma courses. About 72 percent of these programs also offer GED preparatory courses, 55 percent offer vocational coursework, 55 percent offer independent study, and 30 percent offer work study components. Administrators indicated a need for more career and technical courses, more electives, a greater focus on literacy, and additional teachers to teach electives and assist special education students. Figure 2 provides an overview of student services offered in the regional alternative education programs.

Figure 2.
Student Services Offered



Student Assessments – Other legislative requirements for these programs include a set of measurable goals and objectives and an evaluation component to determine student performance and program effectiveness. In this context, over 85 percent of the programs report employing traditional assessments (e.g., an A, B, C, D, F letter grading systems, end-of-year examinations) for all students enrolled. Over 60 percent use nontraditional assessments (e.g., oral presentations, portfolios, self-assessments, grading rubrics shared in advance, behavior) for all students. About 70 percent of the programs use combinations of traditional and nontraditional approaches to assessing their students.

General Policies – General policies vary among programs. Administrators report that the following policies are employed by their programs. Since most of these policies apply only to high schools, percentages are for programs serving grades 9-12.

- Specific criteria must be met before a student can return to a regular high school. (90 percent of programs).
- Students with an Individual Education Plan (IEP) are allowed to enroll in the alternative programs (90 percent of the programs).
- Students are limited to a certain number of academic credits earned while attending the alternative program (52 percent of programs).
- Students are allowed to take needed courses at a regular high school that cannot be provided by the alternative program (52 percent of programs).
- Students are required to return to their sending high school if they want to graduate with a standard diploma (35 percent of programs).

Discipline Policies – Discipline policies vary among programs.

- Eighty-six (86) percent of the programs state that students are subject to the rules of the sending high schools and/or have their own discipline system.
- Forty-eight (48) percent have a zero tolerance policy for misbehavior.
- Seventy-six (76) percent use behavioral contracts.
- Most programs report use of behavioral evaluation sheets daily or weekly.

B. Staff

Program Staffing – Administrators of the 29 programs reported a total of 293 teachers (in full-time equivalents). Of that number, 95 percent are licensed. Additionally, programs reported 85.5 counselors and 51.25 school psychologists. A low pupil-to-teacher ratio is a legislative requirement for these programs. In 2006-2007, the programs reported student-to-teacher ratios between 4:1 and 15:1.

Professional Development – A current program of staff development and training is another legislative requirement for this program. The extensive and diverse special needs and challenges of the students assigned to the regional alternative education programs present additional needs for staff development.

Improving and expanding staff development is frequently mentioned as a primary concern of program administrators. These needs include a broad spectrum of professional development related to content areas, use of technology, programmatic and administrative issues, as well as an even broader spectrum of areas that relate to the behavioral problems common to the students served. Table 3 provides information regarding the extent to which the needs for staff professional development in the regional alternative education programs were addressed during the 2006-2007 school year.

Table 3.
Professional Development

Staff Development Programs	Percentage of Teachers in Program
Technology	97.6
Content work	94.5
Discipline	91.4
Alternative education practices	87.1
Conflict management	80.0
Alcohol and drug abuse	78.7
Violence	77.1
Counseling	62.6

C. Program Resources and Support

General Resources – The regional alternative education programs report that their program resources are generally satisfactory. Approximately 80 percent of all responses from the program administrators, across all categories, indicate that they perceived their program resources as either "excellent" or "good" and only three percent of the responses reflect a "poor" ranking.

External Program Support – A program for community outreach to build school, business, and community partnerships is a legislative component of the regional alternative education programs. All programs report extensive efforts to build external support, and the program administrators report that they generally receive very good external support.

Administrators report that their school boards, localities, and area agencies generally provide excellent support. Over 80 percent of the responses regarding these sources indicate "excellent" or "good" support.

D. Parental and Community Involvement

A procedure for obtaining the participation and support from parents is a legislative requirement of the regional alternative education program. Each program reports initiatives addressing these objectives. Of the responding administrators, 24.1 percent report that parental involvement in their program is "excellent"; 62.1 percent report "good" parental involvement; 13.8 percent report "fair" parental involvement; and zero percent reported that the parental involvement in their program was "poor."

Perceptions regarding community involvement in the regional alternative education programs are mixed. Of the responding administrators, 6.9 percent report that community involvement in their program is "excellent"; 58.6 percent report "good" community involvement; 31 percent report "fair" community involvement; and 3.5 percent reported that the community involvement in their program was "poor."

CHAPTER FOUR

Program and Student Performance

Defining and measuring performance are different for the alternative education population than it would be in the traditional school systems.

A. Considerations for Evaluating Regional Alternative Education Program and Student Performance

The student populations in the regional alternative education programs present challenges because the assigned students often have histories of behavioral problems, low self-esteem, and academic failure. Since these are generally students who have been suspended, these programs are deemed as the only remaining academic option. Almost 97 percent of programs report that students are placed or assigned to their program as "a last chance option."

The student body of any given program has less continuity from year-to-year (often from month-to-month) than a traditional school. Programs are generally small and address an array of needs. The combination of these needs and the operational constraints of the programs dictate different policies, administrative procedures, and academic approaches. They also dictate a different approach to evaluating both program and student performance. One approach for assessing program and student performance is the programs' self-reported "program purposes" as presented in Figure 1. These include:

- reduce the dropout rate;
- build self-esteem and responsibility;
- correct dysfunctional and/or dangerous behavior;
- return students to high school to graduate;
- identify career interests;
- gain admission to an institution of higher education;
- secure employment or work/study;
- obtain diploma from sending school in absentia; and
- earn a General Educational Development (GED) certificate through an Individual Student Alternative Education Plan (ISAEP).

B. Measures of Achievement

It is difficult to consider standard measurements such as Standards of Learning (SOL) tests, attendance, and dropout rates in the same way as they would be considered for traditional schools because the student populations, educational models, and operational models are different.

Standards of Learning – The ability to report SOL test results for students that were served in a regional alternative education program was available for the first time in the 2005-2006 school year. The figures for 2005-2006 and 2006-2007 are reported in Table 4. There were 1,916 alternative education students who took the Standards of Learning tests in English and mathematics in 2006-2007. These students achieved a 48 percent pass rate on the English SOL, and a 33 percent pass rate on the mathematics SOL for 2006-2007, however the data below do not represent cohort data because students move in and out of these programs. It is difficult to know if these same students would have performed better or worse in their home schools.

Table 4.
Standards of Learning Assessment Results in English and Mathematics [1]

Year	Students Taking SOL Tests	English Pass Rate Percentage	Mathematics Pass Rate Percentage
2005-2006	1,762	32	19
2006-2007	1,916	48	33

Note [1]: These assessment results reflect students who were in the regional alternative program during test administration.

Dropout/Dismissal Rates –The total 2006-2007 dropouts reported by the program administrators for this evaluation was 4.9 percent (i.e., 207 dropouts). The state average for dropouts for traditional schools was 1.88 percent. Most regional alternative education students are considered dropout risks prior to being assigned to these programs. The dismissal/expulsion rate for 2006-2007 was 7.6 percent, and 321 students were dismissed or expelled from the alternative programs.

Perceptions of Changes in Student Academic Performance – Administrators were asked to provide their perceptions of changes in their students' academic performance. The administrators perceive somewhat or substantial improvement in approximately 80 percent of students served.

Table 5.
Reported Perceptions of Change in Academic Performance

Reported Change During Assignment to Alternative Education	Substantially Improved	Somewhat Improved	Somewhat Decreased	Substantially Decreased	No Apparent Change	Total Responses
Middle Grades – Mathematics	11.5%	53.8%	3.8%	0.0%	30.8%	26
Middle Grades – English	15.4%	61.5%	0.0%	0.0%	23.1%	26
High School – Mathematics	25.0%	60.7%	0.0%	0.0%	14.3%	28
High School – English	25.0%	71.4%	0.0%	0.0%	3.6%	28

Perceptions of Changes in Student Disciplinary Incidences – Correcting behavior is a primary goal of regional alternative education programs. Over 70 percent of the administrators reported decreases in physical violence. Slightly over 60 percent reported decreases in firearms violations. Over 70 percent reported decreases in possession of other weapons. Decreases in substance abuse use were reported by 62 percent, and 24 percent reported no change in substance abuse use. Sixty-two (62) percent reported decreases in offenses against property, while 31 percent reported no change in offenses against property.

End-of-Year Status of 2006-2007 Students – Data discussed previously in this report suggest that many of the students that the programs served in 2006-2007 were assigned as a final alternative. Most of these students were at-risk of dropping out, being expelled permanently, or failing academically. Some had already been incarcerated, and the violations that led to their enrollment in the alternative education program (see Table 2) suggest many others were candidates for future incarceration. Table A3 in Attachment A3 summarizes the status of the 2006-2007 students served by the regional alternative education programs based on data provided by the programs as of June 2007. Based on these data, approximately 70 percent of students served in the 2006-2007 regional alternative education programs remain in school, either returning to the regional alternative program for 2007-2008 (21.3 percent), or returning to their sending school for 2007-2008 (48.9 percent). For this population, remaining in school is an accomplishment and a stated goal of the regional alternative education programs.

ATTACHMENTS

Attachment A1

Listing of Regional Alternative Education Programs – 2006-2007

Table A1.
Regional Alternative Education Programs – 2006-2007

School Division-Fiscal Agent	Other Participating Divisions	Program Name
Bristol City Public Schools	Washington County Public Schools	Crossroads Alternative Education Program
Brunswick County Public Schools	Greensville and Mecklenburg County Public Schools	Southside LINK
Carroll County Public Schools	Galax City Public Schools	Carroll-Galax Regional Alternative Education Program (The RAE Center)
Fairfax County Public Schools	Alexandria City Public Schools	Transition Support Resource Center
Fauquier County Public Schools	Rappahannock County Public Schools	The Regional Continuum of Alternative Education Services
Fluvanna County Public Schools	Alleghany, Bath, Botetourt, Charles City, Clarke, Craig, Culpeper, Floyd, Franklin, Giles, Grayson, Greene, Halifax, Highland, Lancaster, Madison, Orange, Shenandoah, and Smyth County Public Schools, Radford City Public Schools	Project RETURN
Henry County Public Schools	Martinsville City and Patrick County Public Schools	Breaking Barriers
King William County Public Schools	Gloucester, Mathews, Middlesex, Essex, King and Queen, and New Kent County Public Schools, Town of West Point Public Schools	Middle Peninsula Regional Alternative Education Program
Lynchburg City Public Schools	Appomattox, Amherst, Bedford, and Nelson County Public Schools	Regional Alternative Education Project

School Division-Fiscal Agent	Other Participating Divisions	Program Name
Montgomery County Public Schools	Pulaski County Public Schools	Regional Program for Behaviorally Disturbed Youths
Newport News City Public Schools	Hampton City Public Schools	Enterprise Academy
Norfolk City Public Schools	Chesapeake, Franklin, Portsmouth, Suffolk, and Virginia Beach City Public Schools, Isle of Wight and Southampton County Public Schools	Southeastern Cooperative Education Program
Northampton County Public Schools	Accomack County Public Schools	Project Renew
Nottoway County Public Schools	Amelia, Buckingham, Charlotte, Cumberland, Lunenburg, and Prince Edward County Public Schools	Piedmont Regional Alternative School
Petersburg City Public Schools	Dinwiddie, Prince George, and Sussex County Public Schools, Colonial Heights and Hopewell City Public Schools	Bermuda Run Educational Center Regional Alternative Program
Pittsylvania County Public Schools	Danville City Public Schools	Pittsylvania County/Danville City Regional Alternative School
Powhatan County Public Schools	Goochland and Louisa County Public Schools	Project Return Regional Alternative Education Program
Prince William County Public Schools	Manassas and Manassas Park City Public Schools	New Dominion Alternative School
Richmond City Public Schools	Hanover and Henrico County Public Schools	Metro-Richmond Alternative Education Program
Roanoke City Public Schools	Salem City Public Schools	Roanoke/Salem Regional
Roanoke County Public Schools	Bedford County Public Schools	R. E. Cook Regional Alternative School

School Division-Fiscal Agent	Other Participating Divisions	Program Name
Russell County Public Schools	Tazewell County Public Schools	Project BRIDGE
Scott County Public Schools	Lee County Public Schools	Renaissance Program
Stafford County Public Schools	Caroline, King George, and Spotsylvania County Public Schools, and Fredericksburg City Public Schools	Regional Alternative Education Program
Staunton City Public Schools	Harrisonburg and Waynesboro City Public Schools, and Augusta County Public Schools	Genesis Alternative School
Westmoreland County Public Schools	Northumberland and Richmond County Public Schools	Northern Neck Regional Alternative Education Program
Wise County Public Schools	Dickenson County Public Schools and Norton City Public Schools	Regional Learning Academy
Wythe County Public Schools	Bland County Public Schools	Wythe/Bland Alternative Education Program
York County Public Schools	Poquoson City and Williamsburg-James City County Public Schools	Three Rivers Project-Enterprise Academy

Attachment A2

Profile of Regional Alternative Education Programs – 2006-2007

Table A2.
Profile of Available Slots, Students Served, and Grades Served – 2006-2007

School Division Fiscal Agent	Grades Served by Each of the Regional Alternative Education Programs													Number of Students Served*	Number of State Slots Available*	Number of Grades Served
	K	1	2	3	4	5	6	7	8	9	10	11	12			
Bristol City										x	x	x	x	59	26	4
Brunswick County							x	x	x	x	x	x	x	83	87	7
Carroll County								x	x	x	x	x	x	59	32	6
Fairfax County								x	x	x	x	x	x	63	44	6
Fauquier County								x	x	x	x	x	x	119	65	6
Fluvanna County	X	x	x	x	x	x	x	x	x	x	x	x	x	578	63	13
Henry County							x	x	x	x	x	x	x	44	31	7
King William County							x	x	x	x	x	x	x	185	110	7
Lynchburg City							x	x	x	x	x	x	x	85	67	7
Montgomery County							x	x	x	x	x	x	x	405	61	7
Newport News City							x	x	x	x	x	x	x	474	166	7
Norfolk City							x	x	x	x	x	x	x	433	116	7
Northampton County										x	x	x	x	65	22	4
Nottoway County							x	x	x	x	x	x	x	90	77	7
Petersburg City							x	x	x	x	x	x	x	54	28	7
Pittsylvania County							x	x	x	x	x	x	x	55	36	7
Powhatan County							x	x	x	x	x	x	x	55	55	7
Prince William County							x	x	x					176	64	3
Richmond City							x	x	x	x	x	x	x	57	41	7
Roanoke City							x	x	x	x	x	x	x	224	54	7
Roanoke County				x	x	x	x	x	x	x	x	x	x	47	26	10
Russell County	X	x	x	x	x	x	x	x	x	x	x	x	x	252	162	13
Scott County							x	x	x	x	x	x	x	78	61	7
Stafford County										x	x	x	x	165	55	4
Staunton City							x	x	x	x	x	x	x	107	99	7
Westmoreland County							x	x	x	x	x	x	x	71	41	7
Wise County										x	x	x	x	54	59	4
Wythe County									x	x	x	x	x	20	25	5
York County							x	x	x	x	x	x	x	48	46	7
Totals =	2	2	2	3	3	3	21	24	25	28	28	28	28	4,205	1,819	

*Since students are assigned for short periods of time in some programs, multiple students can be served per slot.

Attachment A3

Profile of Regional Alternative Education Program Student Status End of School Year – 2006-2007

Table A3. Status of Students at the End of the 2006-2007 School Year [1]

School Division Fiscal Agent	Number of Students Served	Total Number of Students Who…			
		Remain in the Program for 2007-2008 [2]	Returned to Sending School for 2007-2008 [2]	Dropped out in 2006-2007 [2]	Were Expelled/Dismissed in 2006-2007 [2]
Bristol City Public Schools	59	15 (25.4%)	13 (22.0%)	5 (8.4%)	4 (6.8%)
Brunswick County Public Schools	83	47 (56.6%)	6 (7.2%)	1 (1.2%)	16 (19.3%)
Carroll County Public Schools	59	17 (28.8%)	5 (8.5%)	3 (5.1%)	2 (3.4%)
Fairfax County Public Schools	63	8 (12.7%)	40 (63.5%)	1 (1.6%)	1 (1.6%)
Fauquier County Public Schools	119	55 (46.2%)	29 (24.4%)	2 (1.7%)	0 (0.0%)
Fluvanna County Public Schools	578	68 (11.8%)	200 (34.6%)	20 (3.5%)	36 (6.2%)
Henry County Public Schools	44	8 (18.2%)	16 (36.4%)	8 (18.1%)	6 (13.6%)
King William County Public Schools	185	24 (13.0%)	113 (61.2%)	2 (1.1%)	8 (4.3%)
Lynchburg City Public Schools	85	20 (23.5%)	40 (47.1%)	0 (0.0%)	2 (2.4%)
Montgomery County Public Schools	405	36 (8.9%)	368 (90.9%)	2 (0.5%)	38 (9.4%)
Newport News City Public Schools	474	57 (12.0%)	417 (88.0%)	15 (3.2%)	79 (16.7%)
Norfolk City Public Schools	433	136 (31.4%)	151 (34.9%)	66 (15.2%)	8 (1.8%)
Northampton County Public Schools	65	25 (38.5%)	4 (6.2%)	1 (1.5%)	0 (0.0%)
Nottoway County Public Schools	90	0 (0.0%)	90 (100.0%)	5 (5.6%)	7 (7.8%)
Petersburg City Public Schools	54	2 (3.7%)	22 (40.7%)	4 (7.4%)	27 (50.0%)
Pittsylvania County Public Schools	55	2 (3.6%)	27 (49.1%)	0 (0.0%)	13 (23.6%)
Powhatan County Public Schools	55	10 (18.2%)	30 (54.6%)	2 (3.6%)	1 (1.8%)
Prince William County Public Schools	176	89 (50.6%)	52 (29.6%)	7 (4.0%)	28 (15.9%)
Richmond City Public Schools	57	3 (5.3%)	53 (93.0%)	0 (0.0%)	1 (1.8%)
Roanoke City Public Schools	224	89 (39.7%)	76 (33.9%)	17 (7.6%)	1 (0.4%)
Roanoke County Public Schools	47	16 (34.0%)	10 (21.3%)	0 (0.0%)	6 (12.8%)
Russell County Public Schools	252	60 (23.8%)	62 (24.6%)	24 (9.5%)	2 (0.8%)
Scott County Public Schools	78	19 (24.4%)	23 (29.5%)	7 (9.0%)	0 (0.0%)
Stafford County Public Schools	165	11 (6.7%)	133 (80.6%)	8 (4.8%)	13 (7.9%)
Staunton City Public Schools	107	50 (46.7%)	6 (5.6%)	2 (1.9%)	10 (9.3%)
Westmoreland County Public Schools	71	7 (9.9%)	30 (42.3%)	0 (0.0%)	1 (1.4%)
Wise County Public Schools	54	15 (27.8%)	12 (22.2%)	5 (9.3%)	0 (0.0%)
Wythe County Public Schools	20	4 (20.0%)	3 (15.0%)	0 (0.0%)	1 (5.0%)
York County Public Schools	48	2 (4.2%)	27 (56.3%)	0 (0.0%)	10 (20.8%)
Totals =	4,205	895 (21.3%)	2,058 (48.9%)	207 (4.9%)	321 (7.6%)

Note [1]: Data collection regarding the number of graduates or GED recipients and students who otherwise left the program was incomplete at the time of this report and those numbers are not reflected in this chart; therefore, percentages do not total 100 percent.

Note [2]: Estimates based on data reported by the programs and follow-up communications.

Attachment A4

***Code of Virginia* Citation for Alternative Education Programs for Certain Students**

§ 22.1-209.1:2. Alternative education programs for certain students.

A. With such funds as may be appropriated for this purpose, the Board of Education shall establish a program consisting of alternative education options for elementary, middle, and high school students in compliance with subdivision D 6 of § 22.1-253.13:1 who (i) have committed an offense in violation of school board policies relating to weapons, alcohol or drugs, or intentional injury to another person, or against whom a petition or warrant has been filed alleging such acts or school board charges alleging such policy violations are pending; (ii) have been expelled from school attendance or have received one suspension for an entire semester, or have received two or more long-term suspensions within one school year; or (iii) have been released from a juvenile correctional center and have been identified by the Superintendent of the Department of Correctional Education and the relevant division superintendent as requiring an alternative education program. However, no child shall be assigned to any alternative education program described in this section for more than one school year without an annual assessment of the placement to determine the appropriateness of transitioning the child into the school division's regular program. On and after July 1, 1994, the program shall consist of up to 10 regional pilot projects; any additional pilot projects shall be located in regions throughout the state to provide greater geographical distribution of such projects. All such projects shall be awarded on a competitive basis to applicants responding to requests for proposals, giving priority in awarding any new sites, to the extent practicable, to applicants in areas with high student suspension and expulsion rates that meet the requirements in subsection B of this section. The Board of Education shall promulgate regulations for the implementation of the program.

B. Upon the appropriation of funds for the purposes of this section, the Department of Education shall issue a request for proposals for regional projects to pilot selected alternative education options by July 1, 1993. The first such grants shall be awarded by August 20, 1993.

In the 2001 fiscal year, and upon the appropriation of funds for these purposes, the Department of Education shall issue a request for proposals for regional pilot projects for selected alternative education options for elementary school students. The first such grants shall be awarded by September 1, 2001.

Applications for grants shall include the following components:

1. An agreement executed by two or more school divisions and approval of their respective governing bodies to pilot an alternative education option as provided in subsection A, and a plan for the apportionment of responsibilities for the administration, management, and support of the program, including, but not limited to, the facilities and location for the program, daily operation and oversight, staffing, instructional materials and resources, transportation, funding and in-kind services, and the program of instruction.

2. A procedure for obtaining the participation in or support for the program, as may be determined, of the parents, guardian or other person having charge or control of a child placed in the program.

3. An interagency agreement for cooperation executed by the local departments of health and social services or welfare; the juvenile and domestic relations district court; law-enforcement agencies; institutions of higher education and other postsecondary training programs; professional and community organizations; the business and religious communities; dropout prevention and substance abuse prevention programs; community services boards located in the applicants' respective jurisdictions; and the Department of Correctional Education.

4. A curriculum developed for intensive, accelerated instruction designed to establish high standards and academic achievement for participating students.

5. An emphasis on building self-esteem and the promotion of personal and social responsibility.

6. A low pupil teacher ratio to promote a high level of interaction between the students and the teacher.

7. An extended day program, where appropriate, to facilitate remediation; tutoring; counseling; organized, age-appropriate, developmental education for elementary and middle school children; and opportunities that enhance acculturation and permit students to improve their social and interpersonal relationship skills.

8. Community outreach to build strong school, business, and community partnerships, and to promote parental involvement in the educational process of participating children.

9. Specific, measurable goals and objectives and an evaluation component to determine the program's effectiveness in reducing acts of crime and violence by students, the dropout rate, the number of youth committed to juvenile correctional centers, and recidivism; and in increasing the academic achievement levels and rehabilitative success of participating students, admission to institutions of higher education and other postsecondary education and training programs, and improving staff retention rates.

10. The number of children who may be assigned to the regional pilot alternative education program during the school year.

11. A plan for transitioning the enrolled students into the relevant school division's regular program.

12. A current program of staff development and training.

C. Beginning with the first year of program implementation, the Department of Education shall be entitled to deduct annually from the locality's share for the education of its students a sum equal to the actual local expenditure per pupil for the support of those students placed by the relevant school division in any such pilot program. The amount of the actual transfers shall be based on data accumulated during the prior school year.

D. A school board shall require written notification to the pupil's parent, guardian, or other person having charge or control, when a pupil commits an offense in violation of school board policies, which school officials determine was committed without the willful intent to violate such policies, or when the offense did not endanger the health and safety of the individual or other persons, of the nature of the offense no later than two school days following its occurrence. A school board shall require the principal of the school where the child is in attendance or other appropriate school personnel to develop appropriate measures, in conjunction with the pupil's parent or guardian, for correcting such behavior.

E. The Board shall require submission of interim evaluation reports of each pilot program biannually and shall compile these reports and other program materials and report the status of such programs on a periodic basis, as may be established, during the 1993 legislative interim to the Special Joint Subcommittee on School Crime and Violence. The Board shall report the effectiveness of such programs and their components annually to the Governor and the General Assembly beginning by December 1, 1994.

F. For the purposes of this section, "regional pilot program" means a program supported and implemented by two or more school divisions which are either geographically contiguous or have a community of interest.

G. For the purposes of this section, "one school year" means no more than 180 teaching days.

(1993, cc. 819, 856; 1994, c. 762; 1995, c. 533; 1996, cc. 755, 914; 2000, c. 739; 2004, cc. 939, 955.)

Board of Education Agenda Item

Item: I. **Date:** September 26, 2007

Topic: First Review of A Report on the Federal No Child Left Behind Act Waiver Requests Made by the Virginia Board of Education (SB 1212 and HB 2542)

Presenter: Dr. Linda M. Wallinger, Assistant Superintendent for Instruction

Telephone Number: (804) 225-2034 **E-Mail Address:** Linda.Wallinger@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
- _X_ State or federal law or regulation
- ____ Board of Education regulation
- ____ Other: _____

_X_ Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

_X_ No previous board review/action

____ Previous review/action
date _____
action _____

Background Information:

House Bill (HB) 2542 and Senate Bill (SB) 1212 directed the Board of Education to continue to seek waivers from compliance with those provisions of the *No Child Left Behind Act of 2001* (NCLB) that are fiscally and programmatically burdensome to school divisions and are not instructionally sound or in the best interest of children. The bill also requested that the Board report on the status of its waivers to the chairmen of the Senate Education and Health Committee and the House Education Committee no later than October 1, 2007.

In October 2006, and January 2007, the Board approved the most recent waiver requests related to certain provisions in NCLB. The attached report provides a summary of the requests and the responses received from the United States Department of Education (USED).

Summary of Major Elements:

Through a focused statewide educational reform effort, Virginia has had a rigorous set of content standards in the Standards of Learning (SOL) program and accompanying assessment system for over ten years. As a result, Virginia supports the primary goal and basic tenets of NCLB since they are in direct alignment with the system of standards and accountability already established in the state. The challenges Virginia faces in meeting the requirements of NCLB relate to the policies and procedures required by USED in implementation of the components of the law. Virginia believes that certain policies and procedures have resulted in unintended consequences and are not representative of sound educational practice. These unintended consequences have served as the foundation for Virginia's requests for flexibility to USED on an annual basis.

Since the passage of NCLB, Virginia has been blending the requirements of NCLB with its accountability system. This alignment has created confusion among state and local administrators as well as the public. Schools that meet one accountability rating may not meet the other, leading to misperceptions about the quality of educational programs in Virginia's schools.

The overall challenges Virginia has faced in implementation of the legislation and submitted as waiver requests for 2007 fall into the following two categories.

- Submissions to satisfy the USED requests as a result of the peer review of the standards and assessment system.
- Submissions to minimize unintended consequences in implementation of Adequate Yearly Progress (AYP) policies.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the report on the Federal No Child Left Behind Act Waiver Requests Made by the Virginia Board of Education (SB 1212 and HB 2542).

Impact on Resources:

The responsibility can be absorbed by the agency's existing resources at this time. If the agency is required to absorb additional responsibility related to this activity, other services may be impacted.

Timetable for Further Review/Action:

Following approval, the report will be forwarded to the Governor and General Assembly as required by SB 1212 and HB 2542.

VIRGINIA BOARD OF EDUCATION

REPORT TO THE GENERAL ASSEMBLY

Report to the Governor and General Assembly on

The Federal No Child Left Behind Act Waiver Requests Made by the Virginia Board of Education (SB 1212 and HB 2542)

PRESENTED TO

VIRGINIA BOARD OF EDUCATION

SEPTEMBER 26, 2007

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Virginia's Challenges in Implementing the *No Child Left Behind Act of 2001*

Through a focused statewide educational reform effort, Virginia has had a rigorous set of content standards in the Standards of Learning (SOL) program and accompanying assessment system for over ten years. As a result, Virginia supports the primary goal and basic tenets of the *No Child Left Behind Act of 2001* (NCLB) since they are in direct alignment with the system of standards and accountability already established in Virginia. The following list shows the components of NCLB that are in direct alignment with Virginia's established system of standards and accountability:

- A statewide goal of requiring all students to achieve proficiency in academic content standards and graduate from high school.
- Rigorous academic content standards and assessments.
- A statewide system of support for low-performing divisions and schools.
- Rigorous teacher licensing requirements to ensure highly qualified teachers.
- Reporting of state, school, and division academic achievement through a Web-based report card.

The challenges Virginia faces in meeting the requirements of NCLB relate to the policies and procedures required by the United States Department of Education (USED) in implementing the components of the law. Virginia believes that certain policies and procedures have resulted in unintended consequences and are not representative of sound educational practice. These unintended consequences have served as the foundation for Virginia's requests for flexibility to USED on an annual basis. Additionally, Virginia has worked collaboratively with other states through the Council of Chief State School Officers (CCSSO) to develop position papers related to these unintended consequences for the purpose of influencing USED's interpretation of the statute as well as the scheduled 2007 reauthorization of the law.

NCLB is not a new federal program; rather, it is the reauthorization of the Elementary and Secondary Education Act (ESEA) that has provided federal funds to states and localities since the 1960s. However, the 2001 reauthorization known as the *No Child Left Behind Act of 2001* imposed additional requirements on state and local programs. In an effort to assist states in meeting new requirements, additional federal funds were allocated to help states expand student achievement testing and invoke sanctions if benchmarks were not achieved.

NCLB requires each state that accepts the federal funds to implement a single statewide accountability system. In Virginia, the requirements of NCLB have been aligned with the state's well-established system of assessment, accountability, and support. One of the major challenges in aligning the two systems has been addressing the differences between the existing state accreditation procedures and the federal measure of Adequate Yearly Progress (AYP). As a result, since the passage of NCLB, Virginia has been blending the requirements of NCLB with its accountability system. This alignment has created confusion among state and local administrators as well as the public. Schools that meet one accountability rating may not meet the other, leading to misperceptions about the quality of educational programs in Virginia's schools.

The overall challenges Virginia has faced in implementation of the legislation and submitted as waiver requests for 2007 fall into the following two categories.

- Submissions to satisfy the USED requests as a result of the peer review of the standards and assessment system.
- Submissions to minimize unintended consequences in implementation of Adequate Yearly Progress (AYP) policies.

Virginia's Implementation of the *No Child Left Behind Act of 2001*

Virginia has made a good faith effort to implement the provisions of NCLB as outlined in Virginia's Consolidated State Application and Accountability Workbook [http://www.doe.virginia.gov/VDOE/nclb/VA-AcctWkbk.pdf]. However, given Virginia's experience in over ten years of intensive work with standards, assessments, and school accountability, the Department of Education has identified certain procedures in implementing the federal policies that result in unintended consequences. In addition to requirements placed on Title I schools, NCLB places requirements and sanctions on non-Title I schools even though these schools receive no federal funding or other support from this title.

The Virginia Board of Education has made frequent and consistent attempts to work with USED to seek waivers and other tolerances permitted within the law to require school divisions to provide the most effective teachers and instruction to students while recognizing that every student, teacher, school, division, and state in the nation has unique circumstances that make it difficult to operate schools in an environment scripted by statute.

Despite the fact that many of the provisions of NCLB are already integral components of Virginia's accountability system and that Virginia's requests have been founded in the actual experience of past practice rather than on policy developed by non-educators, USED has time and again refrained from exercising Section 9401 of the statute that permits states to request, and the U.S. Secretary of Education to approve waivers to requirements of the law.

Reauthorization of the *No Child Left Behind Act of 2001*

The *No Child Left Behind Act of 2001* is scheduled to come before the United States Congress for reauthorization in fall 2007. Virginia, along with most other states, and many other entities, hopes to influence the provisions of the law during this reauthorization. Each year since 2003, Virginia has worked with its Congressional delegation to highlight requirements of the law that are not practical for implementation at a state and local level, or that do not constitute good instructional practice. Additionally in 2007, the Board prepared its own proposal for reauthorization to address the requirements that constitute components of NCLB that are not an integral or necessary component of the Commonwealth's own Standards of Quality, Standards of Accreditation, or Standards of Learning.

General Summary of No Child Left Behind Requests

Appendix A contains a summary of all requests and their status from calendar year 2004 to calendar year 2007.

The Federal No Child Left Behind Act Requests Made by the Virginia Board of Education

Summary of NCLB Requests for 2007

Virginia's proposed amendments for 2007 fall under two categories: 1) those submitted as a result of the United States Department of Education's (USED) request based on the peer review of Virginia's standards and assessment system; and 2) those submitted to minimize unintended consequences in implementation of Adequate Yearly Progress (AYP) policies. The amendments submitted in the first category satisfied requests from USED on March 22, 2006, and June 28, 2006, and resulted in elevating the rating of the state's standards and assessment system from "Approval Pending" to "Approval Expected". This change in rating removes the state from mandatory oversight by USED. The requests related to the peer review of the standards and assessment system are as follows: 1) elimination of the Stanford English Language Proficiency (SELP) assessment as a reading proxy for certain limited English proficient (LEP) students; 2) removal of scores of certain substitute tests and the Virginia Substitute Evaluation program (VESP) from the calculation of AYP; and 3) expansion of the Virginia Grade Level Alternative (VGLA) to include limited English proficient (LEP) students at levels 1 and 2 of English language proficiency.

The requests in the second category asked USED to exercise its waiver authority to minimize unintended consequences in implementation of AYP polices. These waiver requests were as follows: 4) reversing the order of the public school choice and supplemental educational services sanctions; 5) extending flexibility in AYP calculations for students with disabilities (SWD); 6) modifying testing and AYP calculation policies for limited English proficient (LEP) students; 7) identifying targets for graduation rate for certain years; and 8) expanding options for the other academic indicator.

The chart below provides the requests for 2007, the date of submission to the United States Department of Education USED by the Board, and the status of the request based on responses received from USED.

Requests	**Request Submitted to USED**	**Status**
Category One: Peer Review Requirements		
1. **Discontinued Use of SELP as a Proxy** – Virginia will discontinue use of the SELP test as the state-approved assessment instrument linked directly to the reading Standards of Learning (SOL) for use with limited English proficient (LEP) students at levels 1 and 2 of English language proficiency.	12/06	Approved via USED letter on 1/31/07
2. **Discontinued Inclusion of VSEP in AYP Calculations** – Virginia will no longer include the scores of students who participate in the Virginia Substitute Evaluation Program (VSEP) in the participation rate or pass rate calculation for AYP.	12/06	Approved via USED letter on 1/31/07

Requests	Request Submitted to USED	Status
3. **Discontinued Inclusion of EOC Scores in AYP Calculations –** Virginia will no longer include the scores of students who take certain tests approved by the Virginia Board of Education as substitutes for end-of-course Standards of Learning tests in the participation or pass rate calculation of AYP with the exception of advanced placement (AP) or International Baccalaureate (IB) exams.*	12/06	Approved via USED letter on 7/16/07
4. **Expanded Use of VGLA** – Virginia will expand the Virginia Grade Level Alternative (VGLA) to assess the reading skills of LEP students.	12/06	Approved via USED letter on 7/16/07
Category Two: Unintended Consequences		
5. **Reversing the Order of Title I School Improvement Sanctions** – Virginia will allow schools the flexibility to reverse the order of sanctions in the first two years of Title I school improvement. Supplemental educational services may be offered to eligible students attending Title I schools in improvement in the first year and public school choice in the second year.	1/07	Approved for 7 pilot divisions via USED letter on 8/1/07 (Pilot divisions are: Fairfax County, Fauquier County, Greene County, Hampton City, Henrico County, Henry County, and Newport News City.)
6. **Assessing Students with Disabilities** – Virginia will continue to implement the United State's Secretary of Education's Transition Option Number 1 (2 percent proxy) for the inclusion of students with disabilities in the calculation of AYP for the 2007-2008 school year, based on assessments that will be administered to those students during the 2006-2007 school year. The proxy will be calculated in accordance with guidance disseminated by USED on May 10, 2005. In addition, Virginia requests an exception of 1.1 percent to the 1 percent cap on the number of proficient and advanced scores from alternative assessments based on alternate achievement standards that may be included in AYP.	1/07	Approved via USED letter on 7/16/07

Requests	Request Submitted to USED	Status
7. **Inclusion of Scores of Former SWD Students** – Including in AYP ratings tests scores for students previously identified within the students with disabilities subgroup of up to two years after special education services are no longer received. This request is in response to regulations recently proposed by USED which permit states to count the scores of special education students in the students with disabilities subgroup for up to two years after they are no longer labeled as a student with disabilities.	Submitted in prior years	Approved through release of Special Education Regulations on April 9, 2007
8. **Exemption of Certain LEP Students from Reading/Language Arts SOL Assessments** – Virginia will exempt recently arrived LEP students at levels 1 and 2 of English language proficiency from the state reading/language arts assessment for two consecutive years.	1/07	Not approved via USED letter on 7/31/07
9. **Interim Graduation Rate Calculation** – Virginia will recalculate the graduation rate and annual measurable objective (AMO) using the formula and methodology approved by USED in 2003 in the Consolidated State Application Accountability Workbook. Current graduation data will be used to recalculate the AMO. This interim AMO will be used for graduation rate through 2008 AYP calculations when the statewide individual student record system is able to provide a more accurate accounting of the graduation rate in Virginia. As required by USED, this represents the percent of on-time graduates who receive a Standard or Advanced Studies Diploma only.	1/07	Approved via USED letter on 7/16/07
10. **Other Academic Indicator** – Virginia will allow school divisions to choose, for each of its elementary and middle schools and schools without a graduating class, attendance or performance on state science, writing, or history and social science assessments as the other academic indicator. The choice of using either attendance or performance on state science, writing, or history and social science as the other academic indicator will also apply to the "safe harbor" AYP calculation methodology.	1/07	Approved via USED letter on 1/31/07 with clarification on 2/8/07

Summary of Approved No Child Left Behind Requests for 2004 through 2006

Listed below is a summary of the approved requests from 2004 through 2006 in the following categories: 1) policies for calculating adequate yearly progress (AYP); 2) criteria to identify schools and divisions for school improvement and the accompanying sanctions; 3) revisions in funding calculations; and 4) highly qualified teachers.

Requests	Request Submitted to USED	Status
Category One: AYP		
1. **Other Academic Indicator** – using either attendance or performance on the Standards of Learning assessments for science as the other academic indicator for elementary and middle schools. **Approved if divisions choose the indicator prior to the start of the school year.**	3/04	Approved via USED letter on 5/25/04
2. **Attendance Rate and Science Targets** – maintaining an attendance rate target of 94 percent instead of increasing to 97 percent by 2014 and requesting a performance target of 70 percent for science. **Approved.**	3/04	Approved via USED letter on 5/25/04
3. **First score requirement** – counting a student's passing score on an expedited retake of the Standards of Learning test in the calculation of AYP as well as the passing scores of students who retake tests needed for graduation. **Approved for first administration in 2004. Expanded beyond first administration in 2005.**	3/04 and 1/05	Approved via USED letters on 5/25/04 on 6/13/05
4. **Graduation rate and other academic indicator** – defining "standard number of years for graduation" as four years or less except for students with disabilities and LEP students. **Approved.**	1/05	Approved via USED letter on 6/13/05
5. **Annual Measurable Objectives** – revising the annual AYP proficiency targets for reading and mathematics. The targets previously increased from 61 percent in reading and 59 percent in mathematics in 2003-2004 to 70 percent in reading and mathematics in 2004-2005. Beginning with 2004-2005, the revised proficiency target for reading was 65 percent and the revised proficiency target for mathematics was 63 percent with increases in increments of 4 until 2013-2014. **Approved.**	6/05	Approved via USED letter on 8/19/05
6. **Grade levels included in AYP calculations –** calculating participation rate for 2006-2007 AYP scores using tests administered in grades 3 through 8 and end-of-course for all subgroups. Performance calculations for student subgroups will be based on tests administered in grades 3, 5, and 8. Newly administered tests in grades 4, 6, and 7 will only be included in AYP performance if test performance improves ratings. **Denied as written, but approved to exercise the flexibility outlined in guidance provided on March 7, 2006.**	3/06	Approved through USED guidance letter on 3/7/06

Requests	Request Submitted to USED	Status
7. **Minimum "n" and division accountability** – using either 50 students or one percent of the enrolled student population for purpose of calculating AYP and applying the 95 percent participation rate. **Approved with modification (cap of 200 students).**	1/05	Approved via USED letter on 6/13/05
8. **Assessing students with disabilities and two percent proxy** – continuing to implement current federal policy of using a two percent proxy for the inclusion of students with disabilities in AYP calculations for the 2006-2007 school year. Virginia also requested and received an exception of 1.1 percent to the current 1 percent cap on the number of proficient and advanced scores from alternate assessments. **Approved.**	1/05	Approved via USED letter on 6/13/05
9. **Assessing students with Limited English Proficiency** – applying USED flexibility for Limited English Proficient (LEP) students regarding a one-time exemption from inclusion in the calculation of AYP in reading/language arts for newly arrived LEP students and inclusion of formerly LEP students in AYP calculations for two consecutive years. **Approved.**	3/04	Approved via USED letter on 5/25/04
Category Two: School Improvement and the Accompanying Sanctions		
10. **Appeals Process for Title I Schools or School Divisions** – requiring the local educational agency to approve the appeals of school improvement designations before consideration by the state. **Approved**.	3/04	Approved via USED letter on 5/25/04
11. **Division accountability** – identifying divisions for improvement only when they do not make AYP in the same subject, same subgroup, and all grade spans for two consecutive years. **Approved with modification (not same subgroup.)**	1/05	Approved via USED letter on 6/13/05
12. **Reversing order of school improvement sanctions** – offering supplemental services before public school choice. Virginia will allow schools the flexibility to reverse the order of NCLB sanctions in the first two years of school improvement. **Denied as written. USED approved a pilot program for four school divisions in Virginia for the 2005-2006 and 2006-2007 school years. The pilot has been expanded to seven school divisions for 2007-2008.** The pilot divisions for 2007-2008 are: Fairfax County, Fauquier County, Greene County, Hampton City, Henrico County, Henry County, and Newport News City.	1/05 and 3/06 and 1/07	Approved for pilot school divisions via USED letters on 8/05 7/06 8/07

Requests	Request Submitted to USED	Status
Category Three: Funding Calculations		
13. **Immigrant children and youth funding formula (Title III)** – revising state set-aside from 15 percent to 5 percent. Virginia will revise the state reservation for Immigrant Children and Youth Funding under Title III: Language Instruction for Limited English Proficient and Immigrant Students. **Approved**	1/05	Approved via USED letter on 2/05
Category Four: Highly Qualified Teachers		
14. **Highly Qualified Teachers** – allowing teachers to become highly qualified through the use of the Highly Objective Uniform State Standard of Evaluation (HOUSSE) approved by the Virginia Board of Education on April 20, 2005. **Approved until June 2008 through submission of revised State Plan on Highly Qualified Teachers.**	4/05	Approved via USED letter on 12/06

Summary of Denied No Child Left Behind Requests from 2004 - 2006

Listed below is a summary of the denied waiver requested from 2004 through 2006 in the following categories: 1) policies for calculating adequate yearly progress (AYP); 2) assessment policies; and 3) criteria to identify schools and divisions for school improvement and the accompanying sanctions.

Requests	Request Submitted to USED	Status
Category One: AYP		
1. **Separate Starting Points for Individual Subgroups –** allowing separate adequate yearly progress starting points and targets for individual subgroups.	1/05	Denied via USED letter on 6/13/05
2. **Other academic indicator** – using other academic indicator for safe harbor only. AYP determinations will be based primarily on meeting or exceeding the annual measurable objectives for reading and mathematics and the 95 percent participation rate requirement. The other academic indicators will be applied only when "safe harbor" is invoked. (Safe Harbor = If a school or a subgroup does not meet its targeted test score goal, an analysis is undertaken to determine if significant improvement has been made. If a school or a subgroup demonstrates a 10% reduction in the percentage of non-proficient students and other criteria are met, AYP is met.)	3/04 and 1/05	Denied via USED letters on 5/25/04 and 6/13/05

Requests	Request Submitted to USED	Status
3. **Growth model based on separate starting points and annual measurable objectives in each subgroup** – permitting Virginia to use a growth model for determining AYP of schools, divisions, and state. Approved as a pilot program for all states – **Virginia does not meet all criteria for participation at this time.**	4/2005	Approved via USED letter as a pilot program for all states on 11/2005 and 10/2006
4. **Inclusion of Limited English Proficient (LEP) students in state assessments** – allowing the reading component of the English Language Proficiency (ELP) Assessment and the plain language forms of the statewide mathematics assessments as the academic assessments under NCLB. These assessments will be used to hold a school/division/state accountable for LEP students' academic achievement during their first 1-3 years of enrollment in the U.S. Students who do not achieve a passing score on the mathematics assessment or the reading component of the ELP test would not be counted in the AYP pass rate calculation, but would be counted toward the 95 percent participation rate calculation. This change will allow Virginia to continue implementing testing policies exempting newly arrived LEP students that are in state regulations and had previously been in effect prior to NCLB.	1/05 and 3/06	Denied via USED letters on 6/13/05 and 7/27/06
Category Two: Assessment Policies		
5. **Assessing students with disabilities** – allowing Individualized Education Program (IEP) teams to make determinations about appropriate Standards of Learning assessments for special education students whose instructional level is one to three years below grade level.	1/05	Denied via USED letter on 6/13/05
6. **ELP Assessment** – excluding kindergarten and first grade LEP students from reading and writing ELP assessment requirement. The English language proficiency of kindergarten and first grade LEP students will be assessed only on listening and speaking skills.	1/05	Denied via USED letter on 4/4/05
Category Three: School Improvement and the Accompanying Sanctions		
7. **Choice and supplemental services** – targeting subgroup(s) and individual students most in need of help. Virginia will target supplemental educational services and public school choice for Title I schools in School Improvement only to the subgroup(s) and individual students not meeting AYP targets. **Denied.**	1/05 and 3/06	Denied via USED letters on 6/13/05 and 7/27/06

Requests	Request Submitted to USED	Status
8. **Consecutive years same subject and same subgroup** – identifying for improvement only those schools that fail to make Adequate Yearly Progress (AYP) for two consecutive years in the same subject and for the same subgroup. **Denied.**	1/05 and 3/06	Denied via USED letters on 6/13/05 and 7/27/06

LEGISLATIVE MANDATE – 2007 GENERAL ASSEMBLY

Be it enacted by the General Assembly of Virginia:

§ 1. A. Pursuant to § 9401 of the federal No Child Left Behind Act (NCLB), Public Law 107-110, the Board of Education shall continue to seek waivers from compliance with those provisions of NCLB that are fiscally and programmatically burdensome to school divisions and are not instructionally sound or in the best interest of children.

The Board shall report on the status of its waivers from compliance to the chairmen of the Senate Education and Health Committee and the House Education Committee no later than October 1, 2007. Such report shall contain a summary of the waivers requested from the United States Department of Education during the calendar year 2007, a summary of the responses from the United States Department of Education, and a timeline providing the submission date of every waiver request and the date that a response was provided.

B. In the event that any or all waiver requests are not approved by the United States Department of Education, the Board shall transmit a summary of all requests not approved to the Virginia Congressional delegation for its consideration in the reauthorization of the Elementary and Secondary Education Act. Such report or reports shall be submitted in a manner prescribed by the Board.

If the reauthorization of the Elementary and Secondary Education Act does not provide the necessary revisions in the federal law to grant states and localities the flexibilities requested in Virginia's waiver requests, the Board shall make a recommendation to the General Assembly on Virginia's continued implementation of NCLB.

C. The Board of Education and Office of the Attorney General of Virginia may bring suit against the United States Department of Education if, as a result of the Commonwealth's withdrawal from the voluntary NCLB, funds that are not directly related to NCLB and that help children from low-income families meet challenging academic content and achievement standards are withheld.

PUBLIC LAW 107-110

THE NO CHILD LEFT BEHIND ACT OF 2001

SECTION 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS

a) *In General. – Except as provided in subsection (c), the secretary may waive any statutory or regulatory requirement of this act for a state educational agency, local educational agency, Indian tribe, or school through a local educational agency, that*

   1) *receives funds under a program authorized by this act; and*

   2) *requests a waiver under subsection (b).*

State Education Activity (SEA) Revenues for NCLB
Virginia Department of Education

Summary of Federal Grants Directly Related to NCLB Virginia Allocation – Includes Funding for Virginia Department of Education and Local School Divisions *Please note: The majority (over 93%) of funding is provided to school divisions.				
Summary of SEA Allocations	7/04- 9/05 Actual Awards	7/05 – 9/06 Actual Awards	7/06 – 9/07 Actual Awards	7/07 -9/08 Actual Awards
Title I, Part A , Academic Achievement of the Disadvantaged	$195,588,567	$216,517,554	$208,011,647	$204,733,095
School Improvement Grants	0	0	0	$1,952,521
Title I, Part B , Reading First	$16,928,231	$18,720,005	$16,695,489	$16,023,323
Title I, Part B, Even Start	$3,483,029	$3,413,489	$1,427,833	$1,191,897
Title I, Part C , Migrant Education	$1,057,027	$804,230	$778,696	$795,099
Title I, Part D, Neglected or Delinquent Children	$951,488	$996,972	$771,344	$1,535,246
Title I, Part F – Comprehensive School Reform	$3,752,370	$3,377,279	0	0
Title II, Part A, Improving Teacher Quality	$52,577,308	$52,736,901	$51,710,156	$51,305,921
Title II, Part B, Mathematics and Science Partnerships	$2,388,059	$3,001,229	$2,887,237	$2,764,540
Title II, Part D, Enhancing Education Through Technology	$10,334,465	$8,009,082	$4,217,200	$4,118,049
Title III, Part A, English Language Acquisition	$7,273,394	$9,222,809	$9,823,062	$10,294,698
Title IV, Part A, Safe and Drug-Free	$8,174,905	$8,144,758	$6,414,756	$6,414,756
Title IV, Part B, 21st Century Community Learning Centers	$15,100,777	$15,191,284	$16,181,378	$15,391,238
Title V, Part A, Innovative Programs	$6,927,544	$4,633,788	$2,312,223	$2,292,710
Title VI, Part A, State Assessments, Improving Academic Achievement	$8,565,602	$8,808,255	$8,808,255	$8,759,302
Title VI, Part B, Rural and Low-Income Schools	$1,165,973	$2,231,070	$1,506,250	$759,829
Total	$334,268,739	$355,808,705	$331,545,526	$328,332,224

Information taken from the U. S. Department of Education FY 2001-2007 State Allocations, by Program and by State. http://www.ed.gov/about/overview/budget/statetables/08stbystate.pdf.

Appendix A – Chronological Summary of No Child Left Behind Requests

Title of Request	Calendar Year of USED Request	Summary	Status (Approved, Denied, No Action)	Comment
Other academic indicator	2004 (March)	Use either attendance or performance on state assessments for science as other academic indicator	Approved in May of 2004	Further flexibility requested and granted in 2007
Attendance rate and science targets	2004 (March)	Maintain an attendance rate target of 94% instead of 97% by 2014.	Approved in May of 2004	
First score requirement	2004 (March)	Count a student's passing score on an expedited retake in AYP	Approved in May of 2004	Requests submitted and approved in both 2004 and 2005
Assessing LEP students	2004 (March)	Applying flexibility regarding one-time exemption from inclusion in AYP	Approved in May of 2004	
Appeals process for Title I schools and divisions	2004 (March)	Require divisions to approve appeals before consideration by the state	Approved in May of 2004	
Other academic indicator	2004 (March)	Use other academic indicator for safe harbor only	Denied in May of 2004	Requested again in January of 2005 and denied in June of 2005
Highly qualified teachers	2005 (April)	Allow teachers to become highly qualified through uniform state standard	Approved in December of 2006	
Growth model	2005 (April)	Permit Virginia to use a growth model for determining AYP	Approved in November of 2005	Approved as a pilot for all states – Virginia could not participate because not all criteria for the pilot could be met
Graduation rate and other academic indicator	2005 (January)	Define "standard number of years for graduation" as four years or less (except for student with disabilities and LEP students)	Approved in June of 2005	
Minimum "n" and division accountability	2005 (January)	Use either 50 students or one percent of the enrolled population for AYP	Approved in June of 2005	Approved with modification – a cap of 200 students
Assessing students with disabilities with 2% percent proxy	2005 (January)	Continue to implement current federal policy of using a 2% percent for the inclusion of students in AYP calculations	Approved in June of 2005	Same flexibility requested and granted in 2007
Division accountability	2005 (January)	Identify divisions for improvement only when they do not make AYP in the same subjection, same	Approved in June of 2005	Approved with modification – not same subgroup

Title of Request	Calendar Year of USED Request	Summary	Status (Approved, Denied, No Action)	Comment
		subgroup, and all grade spans for two consecutive years		
Reverse order of sanctions	2005 (January)	Allow SES in first year and school choice in second	Approved in August of 2005	Approved with modification – four school divisions allowed to participated in a pilot program – expanded to seven in 2007
Funding formula for Title III	2005 (January)	Revising state set-aside from 15% to 5%	Approved in February of 2005	
Separate starting points for subgroups	2005 (January)	Allow separate starting points and targets	Denied in June of 2005	
Inclusion of LEP students in state assessments	2005 (January)	Allow the reading component of the ELP assessment and plain language forms of statewide mathematics assessments as assessments under NCLB	Denied in June of 2006	Also requested in March of 2006 and denied in July of 2006
Assessing students with disabilities	2005 (January)	Allow IEP teams to make determinations about appropriate assessments	Denied in June of 2005	
ELP assessments	2005 (January)	Exclude kindergarten and first grade LEP students from reading and writing ELP assessment requirement	Denied in April 2005	
Target choice and SES	2005 (January)	Target subgroups and individual students most in need of help	Denied in June of 2005	Requested again in March of 2006 and denied in July of 2006
Consecutive years same subject and same subgroup	2005 (January)	Identify for improvement only those schools that fail to make AYP for two consecutive years	Denied in June of 2005	Requested again in March of 2006 and denied in July of 2006
Annual measurable objectives	2005 (June)	Revise the annual targets for reading and mathematics	Approved in August of 2005	
Discontinued Use of SELP as a Proxy	2006 (December)	Discontinue use of SELP as an assessment instrument for LEP students at the first two levels of proficiency.	Approved in January of 2007	
Expanded use of VGLA	2006 (December)	Use this test to assess reading skills of LEP students (in place of SELP)	Approved in July of 2007	
Inclusion of VSEP score in AYP	2006 (December)	Do not include scores of students taking VSEP in AYP calculations	Approved in January of 2007	
Inclusion of EOC	2006	Do not include scores of	Approved in July	

Title of Request	Calendar Year of USED Request	Summary	Status (Approved, Denied, No Action)	Comment
scores in AYP	(December)	students taking EOC tests approved by the state Board as substitute tests in AYP calculations	of 2007	
Inclusion of scores of former students with disabilities	2006 (March)	Include in AYP calculations test scores for students previously identified as students with disabilities for up to two years after services are no longer needed	Approved in April of 2007	No USED letter received – action approved via the release of federal special education regulations
Grade levels in AYP	2006 (March)	Calculate participation rate for 2006-2007 AYP using grades 3 through 8 but performance based on tests administered in grades 3, 5, and 8.	Approved in March of 2006	Denied as originally requested but approved to exercise flexibility provided in existing federal guidance
Reverse order of sanctions	2007 (January)	Allow SES in first year and school choice in second	Approved in August of 2007	Approved with modification – seven school divisions allowed to participated in a pilot program
Assessing students with disabilities	2007 (January)	Continue to implement current federal policy of using a 2% percent for the inclusion of students in AYP calculations	Approved in July of 2007	
Interim graduation rate calculation	2007 (January)	Recalculate the graduation rate and annual measurable objections	Approved in July of 2007	
Other academic indicator	2007 (January)	Allow school divisions without a graduating class to choose the academic indicator	Approved in July of 2007	
Exemption of certain LEP students from reading/language arts state assessments	2007 (January)	Exempt recently arrived LEP students at levels 1 and 2 of English proficiency from assessments for two consecutive years	Denied in July of 2007	USED letter received in July of 2007

Appendix B – Glossary of Terms

AYP - Adequate Yearly Progress represents the minimum level of improvement that schools and school divisions must achieve each year as determined by NCLB.

AMOs - Annual Measurable Objectives are the minimum required percentages of students determined to be proficient in each content area.

Assessment - A test or other method for measuring achievement.

ESEA - Elementary and Secondary Education Act is the primary federal law affecting K-12 education. Congress reauthorizes it every six years. The most recent authorization is also referred to as the NCLB Act, approved by Congress in 2001 and signed into law by President George W. Bush in January 2002.

Expedited retake - A SOL test taken during the same academic year, and before the next scheduled test administration, by a student who, on his first attempt, scored within 25 points of passing or has exceptional or mitigating circumstances.

Graduation rate - Graduation rates for high schools and school divisions reported on the Virginia School Report Card include all recipients of any type of certificate or diploma (as well as students who have dropped out of or transferred into a high school) in the denominator and only those students receiving a Standard Diploma or Advanced Studies Diploma (excluding students receiving a Special Diploma, Modified Standard Diploma, Certificate of Attendance or GED certificate) in the standard number of years in the numerator.

Highly qualified - This term refers to a teacher who has obtained full state teacher certification and has demonstrated subject matter competency. All teachers of federal core academic subjects hired after the first day of the 2002-2003 school year and teaching in a program supported with Title I, Part A, funds must be "highly qualified." All teachers of core academic subjects are to be highly qualified by the end of the 2005-2006 school year.

Individualized Education Program (IEP) - "Individualized education program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with federal regulations. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the needs.

Individual with Disabilities Education Act (IDEA) - Federal law has guided the delivery of special education services for students with disabilities since enactment of the *Education for All Handicapped Children Act* (P. L. 94-142) in 1975. The law pledged the availability of federal funding for states to provide a "free and appropriate public education" for every school-age child with a disability. Renamed the *Individuals with Disabilities Education Act* in 1990, and reauthorized in 1997 and again in 2004, the act emphasizes quality teaching, learning, and the

establishment of high expectations for disabled children. The IDEA also strengthened the role of parents in the educational planning process, endorsed meaningful access to the general curriculum, and delineated how school disciplinary rules and the obligation to provide a free appropriate public education for disabled children fit together.

In improvement - If a Title I school or a school division does not make AYP in the same subject area for two years in a row, the school or division is considered to be "in improvement" and is required under NCLB to take certain actions to raise achievement.

LEP - Limited English Proficient refers to students for whom English is a second language and who are not reading or writing English at their grade level.

NCLB - No Child Left Behind Act of 2001 was signed into law by President Bush in 2002

Other academic indicator - For AYP calculations, in addition to meeting AMOs in reading and mathematics, elementary and middle schools must also meet AMOs for attendance or science and high schools must also meet AMOs for graduation, or show improvement. School divisions must decide prior to the beginning of the school year whether to use attendance or science as the AMO for elementary and middle schools.

Public school choice - See "Transfer Option"

Safe harbor - A provision of NCLB intended for schools and school divisions that are making progress in raising student achievement but not yet meeting target goals for AYP.

SOL - Standards of Learning for Virginia Public Schools describe the commonwealth's expectations for student learning and achievement in grades K-12 in English, mathematics, science, history/social science, technology, the fine arts, foreign language, health and physical education and driver education.

Stanford English Language Proficiency Test (SELP) – The state-approved English language proficiency assessment as required by NCLB. The SELP test, developed by Harcourt Assessment, Inc., assess the speaking, listening, reading, and writing skills of all limited English proficient (LEP) students.

Supplemental services - Students in a Title I school identified as needing improvement for two consecutive years are eligible to receive outside tutoring. Parents can choose the appropriate services for their child from a list of state-approved providers. The school division must pay for the services.

Title I - Federal-funding program designed to help low-income children who are behind academically or at risk of falling behind. Title I funding is based on the number of low-income children in a school, generally those eligible for free lunch or reduced-fee lunch programs.

Transfer option - Also referred to as "Public School Choice." Students in Title I schools identified as needing improvement have to provide the option for students to transfer within

the division to a school that has made AYP. The school division is required to provide transportation to those students.

Virginia Grade Level Alternative (VGLA -An assessment developed to meet the NCLB requirement that all students, including those with disabilities, be assessed on statewide accountability measures for the purpose of measuring AYP. Both the reauthorized IDEA and NCLB require states to create alternate assessments for students who are unable to take the general statewide assessments. NCLB allows creation of an alternate assessment based on grade level content and achievement standards. The VGLA is an alternate assessment evaluated against grade level achievement standards.

Virginia Alternate Assessment Program (VAAP) - The reauthorized IDEA (2004) requires states to develop an alternate assessment for students with significant cognitive disabilities who cannot participate in the general statewide assessment program even with accommodations. Students participating in the VAAP are evaluated against alternate achievement standards aligned to grade level content standards.

Virginia Substitute Evaluation Program (VSEP) - An assessment used to enable certain students with unique disabilities to earn credits towards graduation.

Source: Report to the Governor and General Assembly on the Costs of the Federal No Child Left Behind Act to the Virginia Department of Education, September 2005, http://www.doe.virginia.gov/VDOE/nclb/coststudyreport-state.pdf

Board of Education Agenda Item

Item: J. **Date:** September 26, 2007

Topic: First Review of Nomination to Fill Vacancy on the Advisory Board on Teacher Education and Licensure

Presenter: Dr. Margaret N. Roberts, Executive Assistant to the Board of Education

Telephone: 804/ 225-2924 **E-mail:** Margaret.Roberts@doe.virginia.gov

___ Topic presented for information only (no board action required)

____ Board review required by
- ____ State or federal law or regulation
- ____ Board of Education regulation
- X __ Other: Board of Education Bylaws

__X__ Action requested at this meeting

___ Action requested at future meeting

Previous Review/Action:

____ No previous board review/action

____ Previous review/action: Approved nominees to ABTEL
date: July 25, 2007
action: Adopted nominees recommended for appointment

Background Information: Article Nine, Section 2 of the Board of Education's bylaws states the following:

> Advisory Committees. Advisory committees may be created by the Board for special purposes to include, but not be limited to, federal and state-mandated committees. An advisory committee shall be composed of persons who represent the views and interests of the general public and who are known to be qualified to perform their duties. Personnel of the Department of Education may be appointed to the committee, as members or as consultants. All appointments to an advisory committee shall be made by the Board upon the recommendations of the Superintendent of Public Instruction. . . .

The Board of Education's bylaws also specify the term of service in Article Sixteen, Section 4, as follows:

> **Section 4. Term of Service.** Appointments to an advisory committee shall be for a term of three years. Members of an advisory committee may be appointed to a second consecutive three-year term, but shall not be eligible to serve for more than six consecutive years . . .

Summary of Major Elements: At the July 2007 meeting, a list of nominees recommended for appointment to the Board of Education advisory committees was adopted. Since that time, one of the nominees for ABTEL has unexpectedly resigned, thereby creating an additional vacancy in the elementary classroom teacher position.

The call for nominations for ABTEL appointments was continued, and the recommended appointee is:

- Ms. Tracey L. Dingus: 4th/5th grade teacher, Bristol City Public Schools

Ms. Dingus is the 2006 Teacher of the Year for the Bristol school division.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education waive first review and adopt the nominee recommended for appointment to the Advisory Board on Teacher Education and Licensure for the July 2007- June 2010 term.

Impact on Resources: The operating expenses and other costs associated with the meetings and functions of the Board of Education's advisory committees are provided through the Department of Education's operating funds. Where applicable, federal funds are provided to support the expenses and the work of an advisory committee.

Timetable for Further Review/Action: Department of Education staff will notify the nominee as soon as possible after the Board's action so that the committee meetings may be set for the coming term. Two advisory committees continue to have one vacancy each: the Virginia Advisory Committee for the Education of the Gifted and the State Special Education Advisory Committee. The call for nominations continues and nominees are expected to be brought forward at the October 18th meeting of the Board of Education.

Board of Education Agenda Item

Item: K. **Date:** September 26, 2007

Topic: First Review of Proposed Board of Education Meeting Dates for the 2008 Calendar Year

Presenter: Dr. Margaret N. Roberts, Executive Assistant to the Board of Education

Telephone: 804/225-2924 **E-mail:** Margaret.Roberts@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

_X_ Board review required by
- ____ State or federal law or regulation
- ____ Board of Education regulation
- _X_ Other: Board of Education Bylaws

___ Action requested at this meeting

_X_ Action requested at future meeting: Final review: October 18, 2007

Previous Review/Action:

_X_ No previous board review/action

___ Previous review/action:
date:
action:

Background Information: Section 2 of Article Three of the Bylaws of the Board of Education states the following:

> Section 2. Regular Meetings. Prior to and no later than the annual meeting (February), the Board shall adopt a tentative schedule for regular meetings for the applicable calendar year. Such schedule shall be subject to the change, alteration or adjustment by the President as he or she deems appropriate, to accommodate the operation of the Board as is necessary.

Summary of Major Elements: In recent years, the Board of Education has met monthly except for the months of August and December. Meetings are typically held on the fourth Thursday of the month, although this is not a requirement. Exceptions are the January meeting which is held early in the month to coincide with the opening of the General Assembly session, and the November meeting, which is scheduled to avoid meeting during Thanksgiving week. The April meeting is typically a two- or three-day planning session. Meetings are scheduled to avoid major religious or secular holidays.

In addition to the regular, monthly business meetings, the President may call special meetings of the full Board of Education and its committees, as deemed necessary. Unless otherwise announced by the President, all Board of Education meetings will held in the Jefferson Conference Room on the 22nd floor of the James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

The proposed meeting dates for 2008 are as follows:

Thursday, January 10, 2008
Thursday, February 28, 2008
Thursday, March 27, 2008
Wednesday-Thursday, April 23-24, 2008
Thursday, May 22, 2008
Thursday, June 19, 2008
Thursday, July 24, 2008
Thursday, September 25, 2008
Thursday, October 23, 2008
Thursday, November 20, 2008

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education review the proposed meeting dates for 2008 and make any desired adjustments prior to final adoption at the October 18, 2007, meeting.

Impact on Resources: Funding to support the expenses related to the meetings of the Board of Education are provided from the Department of Education's general operating budget, which is appropriated by the General Assembly.

Timetable for Further Review/Action: The list of proposed meeting dates for 2008 will be presented for final adoption at the meeting on October 18, 2007. Following adoption, the dates will be widely disseminated and posted on the appropriate Web sites.

ATTACHMENT:

BOARD OF EDUCATION
PROPOSED MEETING DATES
2008 CALENDAR YEAR

Thursday, January 10, 2008

Thursday, February 28, 2008

Thursday, March 27, 2008

Wednesday-Thursday, April 23-24, 2008

Thursday, May 22, 2008

Thursday, June 19, 2008

Thursday, July 24, 2008

Thursday, September 25, 2008

Thursday, October 23, 2008

Thursday, November 20, 2008

Board of Education Agenda Item

Item: L. **Date:** September 26, 2007

Topic: First Review of Recommendations for Adoption of an English Language Proficiency Assessment to be Administered in 2008-2009

Presenter: Mrs. Shelley Loving-Ryder, Assistant Superintendent, Division of Student Assessment and School Improvement

Telephone Number: (804) 225-2102 **E-Mail Address:** Shelley.Loving-Ryder@doe.virginia.gov

Origin:

__x__ Topic presented for information only (no board action required)

Board review required by
____ State or federal law or regulation
___ Board of Education regulation
____ Other: _____

____ Action requested at this meeting __ Action requested at future meeting: ____ (date)

Previous Review/Action:

___ No previous board review/action

____ Previous review/action
date _____
action _____

Background Information:
Title I, Part A, of the *No Child Left Behind Act of 2001* requires local school divisions to administer an annual assessment for all kindergarten through twelfth-grade limited English proficient (LEP) students. The English language proficiency (ELP) assessment must measure the oral language, reading, and writing skills of all LEP students in a school division. As stipulated in the non-regulatory Title III, Part A, Guidance on Standards, Assessment, and Accountability, if a state decides to allow school divisions to use multiple measures to assess English language proficiency, the state must:

- set technical criteria for the assessments;
- ensure that any assessments used are equivalent to one another in their content, difficulty, and quality;
- review and approve each assessment; and
- ensure that data from all assessments can be aggregated for comparison and reporting purposes, and can be disaggregated by English language proficiency levels and grade levels.

For the 2003-2004 and 2004-2005 school years, the Stanford English Language Proficiency (SELP) test was the state-approved and funded ELP assessment to meet the Title I and Title III requirement for limited English proficient (LEP) students. As a result of feedback from school divisions, beginning in 2005-2006, the Department of Education allowed each school division flexibility in selecting the ELP

assessment it wanted to use. School divisions could use the SELP or another locally developed or selected ELP assessment that was aligned to Virginia's ELP standards and ELP levels; measured the four required skill areas of listening, speaking, reading, and writing; and adhered to psychometric guidelines for reliability and validity. For the 2007-2008 school year school divisions again have flexibility in choosing an ELP assessment. School divisions may use an ELP assessment already approved by the Virginia Board of Education or they may submit a locally developed or selected instrument for consideration.

Some school divisions have expressed interest in again having a state-approved ELP assessment that would be used by all school divisions. A state-approved ELP assessment would enable school divisions to have more accurate information about the proficiency levels of students transferring from other Virginia divisions and would ensure the accuracy of statewide aggregate data. As a first step in the possible adoption of a statewide ELP assessment, the Virginia Department of Education conducted two Focus Group Meetings, February 16, 2007, and June 28, 2007, to review several ELP assessments for possible statewide use beginning in 2008-2009. The Focus Groups included Title III Coordinators, ESOL teachers, representatives of the LEP Caucus, and Division Directors of Testing.

Summary of Major Elements:
A report on the focus group's review of selected English language proficiency assessments is provided in Attachment A.

Superintendent's Recommendation:
The Superintendent of Public Instruction recommends that the Board accept for first review the recommendation of the focus groups convened to review English language proficiency assessments.

Impact on Resources:
N/A

Timetable for Further Review/Action:
N/A

Attachment A

Summary Report
Review of English Language Proficiency Assessments
Presented to the Virginia Board of Education on September 26, 2007

The Virginia Department of Education conducted two Focus Group Meetings, February 16, 2007, and June 28, 2007, to review several English Language Proficiency (ELP) assessments for possible use as state- approved ELP assessments. The Focus Groups included Title III Coordinators, ESOL teachers, representatives of the LEP Caucus, and Division Directors of Testing.

English Language Proficiency Assessments Review Meeting
February 16, 2007

Initially the Focus Group, which was composed of eight school division representatives from Regions 4 and 5, reviewed four ELP assessments:

1. *Access for English Language Learners* (Access)
   Affiliation, World-class Instructional Design and Assessments (WIDA) Consortium
2. *Idea Proficiency Test* (IPT)
   Publisher, Ballard & Tighe
3. *English Language Development Assessment* (ELDA)
   Affiliation, Council of Chief State School Officers (CCSSO)
4. *Language Assessment Scales* (LAS) Links, Second Edition
   Publisher, CTB/McGraw-Hill

A summary of the Focus Group's comments and recommendations is outlined in the chart below.

Summary of ELP Assessments Reviewed
February 16, 2007

ELP Assessment (Listening, Speaking, Reading, and Writing)	**Grade/ Level Clusters**	**General Comments**	**Recommendations***
Access	Clusters K-2 3-5 6-8 9-12	•Excellent integration of content and language •Aligned with national TESOL standards • Format seems manageable for schools •Score reports provide very useful information	**8** Recommended

ELP Assessment (Listening, Speaking, Reading, and Writing)	**Grade/ Level Clusters**	**General Comments**	**Recommendations***
IPT	Grades 2-12	•Addresses academic/second language in content areas •Does not embed enough content •Does not accurately and fairly assess student proficiency at either end of the spectrum	**4** Recommended **3** Recommended with Reservations **1** Not Recommended
ELDA	Grades K-2 Grades 3-12	•Not closely tied to content academic language, yet appears to have social "academic" language •Appears to be very time consuming to administer •Does not bridge across grade clusters •Writing prompts are very weak	**0** Recommended **3** Recommended with Reservations **5** Not Recommended
LAS Links, Second Edition	Clusters K-1 2-3 4-5 6-8 9-12	•Not an impressive assessment for ELP determination in light of linkage to academic language expectations •Do not see enough substance overall or rigor to reflect classroom realities—high school is too easy •Students at LEP level would have much difficulty taking their grade level assessment •Does not bridge across grade cluster	**0** Recommended **0** Recommended with Reservations **8** Not Recommended

* Evaluations submitted by 8 school division participants

English Language Proficiency Assessments Review Meeting
June 28, 2007

The second Focus Group, which was composed of eight representatives from Regions 1, 4, and 6 met on June 28, 2007. Participants reviewed and discussed three ELP assessments reviewed by the first group: (1) *Access for English Language Learners* (Access), (2) *Idea Proficiency Test* (IPT), and (3) *English Language Development Assessment* (ELDA).
State representatives from Alaska, North Carolina, Nebraska, South Carolina, Kentucky, and New Jersey, with experience in the administration of one or more of the three ELP assessments also participated in the meeting by conference call. The state representatives shared their experiences and responded to questions from the group.

A summary of the Focus Group's recommendations in order of preference follows.

Summary of ELP Assessments Reviewed
June 28, 2007

ELP Assessment/ Cost	Grade/ Level Clusters	General Comments	Recommendations*
Access -$23 per student -$35, 000* for alignment work (*can be waived, if state chose not to do alignment study) -2.5% charge with a maximum for divisions to cover processing fees	Clusters K-2 3-5 6-8 9-12	**Strengths** •Aligned with content standards; will drive instruction •Language of content is strong •Length of test is appropriate •Ancillary materials are user friendly **Weaknesses** •May be complicated to identify the appropriate tier for testing the students • Lots of materials	**7** Recommended **2** Recommended with Reservations **0** Not Recommended
ELDA -$18 per student -$25, 000 Membership fee paid by state -state or divisions may contract individually with vendor to handle operation costs	Grades K-2 Grades 3-12	**Strengths** • Online testing capability **Weaknesses** • Lack of content alignment • Very long; lots of materials to handle • Does not assess academic language of content areas • Manuals provide insufficient directions; not enough details	**1** Recommended **4** Recommended with Reservations **4** Not Recommended
IPT -$20.47 per student (Division price based on 20,000 students minimum, if fewer students the state fee will increase) -$1,192, 380 State fees (includes program management, integration into PEMSolutions, Std Setting)	Grades 2-12	**Strengths** • Materials are visually attractive and "polished" • Adoption of IPT would be easier because of current use of PEMSolutions **Weaknesses** • Appears to be testing academic content, but it is really relying on background knowledge and reading skills • Appears to have more "math content" • Lacks necessary rigor for students to progress • Cost is prohibitive • Only two forms; if one used for screening then only one left for testing for progress •Outdated pictures	**0** Recommended **1** Recommended with Reservations **8** Not Recommended

Board of Education Agenda Item

Item: M. **Date:** September 26, 2007

Topic: Annual Report of the State Special Education Advisory Committee

Presenter: Ms. Anne Fischer, Chair

Origin:

_X_ Topic presented for information only (no board action required)

___ Board review required by
__X_ State or federal law or regulation
____ Board of Education regulation
___ Other: _____

___ Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

___ No previous board review/action

____ Previous review/action
date _____
action _____

Background Information:
The State Special Education Advisory Committee (SSEAC) is a federally-mandated panel comprised of individuals with disabilities, teachers, parents, state and local officials, and local administrators. The Individuals with Disabilities Education Act (IDEA) requires that the committee submit an annual report to the state education agency.

Summary of Major Elements:
The report includes (1) an overview of the SSEAC organizational structure, (2) a description of meetings conducted during the 2006-07 year, (3) an overview of issues addressed by the committee during the year, and (4) a list of future issues that the SSEAC will consider.

Superintendent's Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education accept the report for consideration and disseminate to the public upon request.

Impact on Resources:
There is no anticipated impact on resources.

Timetable for Further Review/Action:
No further review or action is required unless desired by the Board.

Virginia State Special Education Advisory Committee Annual Report

July 2006 – April 2007

Presented to the Virginia Board of Education

by

Mrs. Anne H. Fischer, Chair

Executive Summary

Virginia State Special Education Advisory Committee
Annual Report July 2006 – April 2007

The State Special Education Advisory Committee (SSEAC) met in regular session four times during the year, both in and outside of Richmond. At each of the meetings, public comment sessions and public forums were held and constituency reports were given to enable the community to provide input to the committee. Virginia Department of Education (VDOE) staff, and representatives from various organizations presented on topics requested by the SSEAC.

Issues Reviewed by the SSEAC and Subcommittees

Topics and issues addressed by the committee during the year included:

- Qualifications, recruitment and retention of personnel who work with students with disabilities
- Services to students with autism
- Revision of state special education regulations
- The Special Education State Performance Plan/Annual Performance Report
- Enhanced constituency involvement
- Secondary Transition
- Students with disabilities' participation in and performance on Virginia's Standards of Learning Assessments
- Response to Intervention.

Recommendations

Based upon public input, constituency reports, and subcommittee deliberations, the committee made the following recommendations during the 2006-2007 year. These are:

- that the license of teachers of students with disabilities accessing the general curriculum be divided into elementary (K-6) and middle/secondary and that coursework be included to meet the grade level content skill and knowledge requirements
- that wording on the proposed endorsement for "teachers of children with disabilities in an adapted curriculum" change the word "adapted" to the word "aligned" to match state assessment terminology
- that a requirement of competence in "orientation and mobility" be added to the vision impairment (VI) teacher endorsement
- that all general education teacher licensure programs require competency in characteristics, legal issues and instructional strategies for children with disabilities
- that the SSEAC endorse the concept of an add-on endorsement for teachers already licensed as elementary teachers or content teachers provided that the add-on endorsement is either at the elementary or middle/secondary level
- that the SSEAC endorse the proposal for the Master's level speech-language pathologist (SLP) to be moved from a teaching license to a pupil personnel license
- that the SSEAC endorse the proposal to include in the state licensure endorsement,

the SLP assistant (provided that they are supervised by a Master's level SLP)

- that the SSEAC endorse the proposal that for provisional licensure, all state required tests must be passed during the first year of the licensure period
- that the VDOE support certificate programs in the areas of leadership in special education, autism, assistive technology and secondary transition
- that the Gifted and Talented licensure language include competence in teaching children with disabilities who are also gifted and talented
- that Indicators 15-20 in the State Performance Plan/Annual Performance Report (SPP/APR) would be reported to the public
- that the format of the Oklahoma [public report] example be included in the school report card by the LEA
- that in lieu of a large stakeholder group, a group of "test drivers" would be used to look at the [public] reports and determine if they are in a useful and understandable format
- that VADOE host conference call sessions with division superintendents and special education directors to share school division data from the SPP/APR
- that the SSEAC support the Virginia Board for People with Disabilities' effort to develop and maintain a database of contact information for individuals interested in special education.

Motions passed by the committee during the 2006-2007 year are provided in Appendix C.

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Introduction

The Individuals with Disabilities Education Act (IDEA) requires that each state establish and maintain a state advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state. The statute specifies membership and requires that a majority of members be individuals with disabilities or parents of children with disabilities, specifically, the statute requires the following:

"(i) parents of children with disabilities (ages birth through 26);
(ii) individuals with disabilities;
(iii) teachers;
(iv) representatives of institutions of higher education that prepare special education and related services personnel;
(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);
(vi) administrators of programs for children with disabilities;
(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
(viii) representatives of private schools and public charter schools;
(ix) not less than 1 representative of a vocational community, or business organization concerned with the provision of transition services to children with disabilities;
(x) a representative from the State child welfare agency responsible for foster care; and
(xi) representatives from the State juvenile and adult corrections agencies."

In Virginia the panel is known as the State Special Education Advisory Committee (SSEAC). Additional information about the roles and functions of the SSEAC may be found in Appendix A.

Committee Organization

The activities of the Virginia State Special Education Committee (SSEAC) are governed by the Virginia Board of Education bylaws for advisory committees. The SSEAC year commences on July 1 and ends on July 30 of the following calendar year. An executive committee works with the Virginia Department of Education (VDOE) staff in establishing priorities and agenda items. The SSEAC delegates various subcommittees to monitor the programmatic issues as well as future items of concern. The subcommittee structure conforms to the federal requirements of the State Performance Plan, the process of Virginia regulatory changes, the monitoring of No Child Left Behind (NCLB) requirements. This structure blends into the process of the Priority Projects as well.

STANDING SUBCOMMITTEES	AD HOC SUBCOMMITTEES
Executive	Data & Reports
Nominating	Constituency Involvement
State Operated Programs	Autism
Policy & Regulation	Personnel

Virginia Department of Education (VDOE) staff members are available to each of the subcommittees to provide technical assistance, clarification of VDOE procedures, and background information.

SSEAC members are assigned a minimum of one standing and one Ad Hoc subcommittee to promote each member's expertise, interest, and concerns. Each executive committee member serves as a chair for a subcommittee. Subcommittees meet independently and make recommendations to the full committee. Such recommendations may include: further study with additional information from the VDOE or referral to the Board of Education through written communications or public comment. The work of the Ad Hoc subcommittees is defined as follows:

Data and Reports
This committee requests and reviews special education data collected by the VDOE, provides assistance in reporting the data to the public and makes recommendations about unmet needs identified through data analysis.

Constituency Involvement
This subcommittee addresses the ways to involve parents, students, and other community constituents in SSEAC activities as well as in local special education training and parent involvement activities.

Autism
This subcommittee addresses issues surrounding special education programs and service delivery for students with autism.

Personnel
This committee addresses concerns regarding the availability of fully licensed, highly qualified special education teachers and related service providers.

Meetings

The committee meets in regular session four times each year, while subcommittees and the executive committee meet as necessary to fulfill their responsibilities to the SSEAC. Every effort is made to consolidate the work of subcommittees to the regular session. All regular meetings are open to the public. The public is offered an opportunity to make comment during specified time allotments at each meeting. All meeting are audio taped to assist with recordkeeping and the audiotapes are maintained by the VDOE in accordance with record keeping policies and procedures.

The committee continues the practice of conducting the meetings across the state. The SSEAC met this year as follows.

July 13-14, 2006	Fairfax
October 19-20, 2006	Harrisonburg
January 11-12, 2007	Richmond
April 19-20, 2007	South Hill

With the exception of the January meeting, evening forums were held for the informal exchange of information with committee members. Attendance varied according to location, with the Fairfax meeting providing opportunity for a larger segment of constituents. The SSEAC has developed a flyer to notify the public of important issues and upcoming meetings. In addition, the SSEAC, in coordination with the Virginia Board for People with Disabilities, supports and assists in formation of a database of constituents interested in special education and information sharing.

The meeting dates and general locations for 2007-2008 are:

July 19-20, 2007	Richmond
October 25-26, 2007	Lynchburg
January 24-25, 2008	Richmond
April 17-18, 2008	Blacksburg area.

The State Operated Programs Subcommittee met May 17, 2007 to review the policies and procedures of the state operated programs and the Virginia Schools for the Deaf, Blind, and Multi-disabled.

Public Comments

A public comment period is designated for each meeting. The SSEAC provides follow-up and feedback as appropriate to the specific issues raised through the public comment. During the 2006-2007 year public comments were made by students, parents, the Parent Education and Advocacy Training Center (PEATC), and the Virginia Office of Protection and Advocacy (VOPA). The following issues were presented:

- The need for improved skills of school personnel to address free appropriate education in the least restrictive environment for students with autism
- Eligibility issues, especially in the English as a Second Language (ESL) community
- Inadequate and problematic service delivery of services in students' Individualized Education Programs (IEPs)
- Problems in definition and recognition of 'twice exceptional' student's (students with disabilities who are also gifted learners) needs
- Diploma options and course credits
- IEP implementation of students placed in group homes
- Exploration of alternative therapies for students with cerebral palsy and autism

- Compliments for the new procedural safeguards document
- Increased provision of information regarding long term care and support services
- Commendation to an Local Education Agency (LEA) for service delivery to students with autism
- Need to increase the graduation rate for students with disabilities
- Possible barriers to the modified standard diploma
- Lack of adequate functional behavioral assessments and behavioral intervention plans.

Constituency Reports
Additionally, at each meeting, members provide an update on issues raised by their respective constituencies. During the 2005-2006 year, the following issues were identified through constituency reports:

- Collections of evidence for the Substitute Evaluation Program not submitted in time for graduation determination
- Lack of positive behavior supports in middle schools
- Concerns regarding 'do not resuscitate' orders for medically fragile students
- Lack of racial diversity of local advisory committees
- State Operated Programs receiving student records in a timely manner
- Retention and recruitment of licensed teachers
- Need for increased priority to be placed on Child Find efforts
- Need for increased efforts to remedy American with Disabilities Act (ADA) non-compliance
- Potential for disproportionality concerns to cause delays and/or incorrect decisions
- Need for improvements in access to public transportation
- Improved transitions from Part B to Part C
- Continued requests to explore more technical assistance for teachers dealing with students with autism
- SSEAC information is being disseminated through the foster care and adoption systems.

Issues Addressed by the SSEAC through Subcommittees

During 2006-2007 year, the SSEAC continued to monitor the Virginia State Improvement Grant and the State Performance Plan/Annual Performance Report as well as other VDOE initiatives. The SSEAC meeting agenda included additional topics related to the educational achievement for students with disabilities. The committee continued to address specific topical issues as follows:

Personnel
Based on work done by the Personnel Subcommittee, and review of public comments on licensure requirements, the SSEAC made recommendations on the proposed licensure regulations which were forwarded to the Board of Education through the public comment

process. The committee made other recommendations on matters pertaining to the preparation of personnel to work with students with disabilities.

- The SSEAC recommended that the license of teachers of students with disabilities accessing the general curriculum be divided into elementary (K-6) and middle/secondary and that coursework be included to meet the grade level content skill and knowledge requirements.
- The SSEAC recommended that wording on the proposed endorsement for "teachers of children with disabilities in an adapted curriculum" change the word "adapted" to the word "aligned" to match state assessment terminology.
- The SSEAC recommended that a requirement of competence in "orientation and mobility" be added to the vision impairment (VI) teacher endorsement.
- The SSEAC recommended that all general education teacher licensure programs require competency in characteristics, legal issues and instructional strategies for children with disabilities.
- The SSEAC endorsed the concept of an add-on endorsement for teachers already licensed as elementary teachers or content teachers provided that the add-on endorsement is either at the elementary or middle/secondary level.
- The SSEAC endorsed the proposal for the Master's level speech-language pathologist (SLP) to be moved from a teaching license to a pupil personnel license.
- The SSEAC endorsed the proposal to include in the state licensure endorsement, the SLP assistant (provided that they are supervised by a Master's level SLP).
- The SSEAC endorsed the proposal that for provisional licensure, all state required tests must be passed during the first year of the licensure period.
- The SSEAC recommended that the VDOE support certificate programs in the areas of leadership in special education, autism, assistive technology and secondary transition.
- The SSEAC recommended that the Gifted and Talented licensure language include competence in teaching children with disabilities who are also gifted and talented.

The committee reviewed information regarding several priority needs to include a university consortium to develop a program for vision impairment (VI) credentialing, the collaborative effort among several universities to prepare speech-language pathologists, and the availability of personnel preparation in the area of autism at various universities.

In response to public comment concerning students with dual exceptionality, the committee requested that the Virginia Department of Education Gifted and Talented (GT) Specialist be invited for a future SSEAC meeting to discuss current requirements and how dual exceptionality (i.e., students with disabilities who are GT) is addressed in personnel preparation.

Students with Autism

Through public comment, open forums, and constituency reports, the SSEAC heard numerous concerns from parents about services for children with autism. Specifically, the Autism Subcommittee reviewed copies of the department's "Autism Spectrum Disorders: VDOE Summary of Efforts" and recommended exploration of a certificate for autism

spectrum disorders.

The Autism Subcommittee reviewed the work of the Virginia Autism Council, including the Council's skill competencies document, and discussed the feasibility of developing and disseminating a publication with positive strategies for parents of students with autism spectrum disorders.

The subcommittee also reviewed the work of the VDOE's autism priority project including regional trainings, community events, consultations, and financial support for speakers at state and local conferences. The collaborative effort among state agencies to establish communities of practice in autism across Virginia was also discussed. Additional information about this program will be provided to the full SSEAC when plans are finalized. The Joint Commission on Healthcare's Behavioral Healthcare Subcommittee has added autism to its work plan for 2007. Identifying a single "home" for autism, securing funding for services, and providing services across the lifespan are tasks that will be addressed.

The Autism Subcommittee has consulted with other SSEAC subcommittees and coordinated recommendations focusing on personnel development, data, and communicating with constituents. Although the Autism Subcommittee concluded its work, it recommended that the full SSEAC be updated regularly on VDOE efforts in the area of autism in order to respond appropriately to emerging concerns. In addition, the Autism Subcommittee strongly supports disseminating the Virginia Autism Council's autism skill competencies to professionals and families who work with individuals with autism to ensure the provision of appropriate services.

Policy and Regulations

During the 2006-2007 year VDOE staff continued to provide ongoing information regarding the status about the revision of state special education regulations. The SSEAC, through the Policy and Regulations Subcommittee, prepared comment during the initial public comment period (see Appendix D). The committee will continue to monitor the regulations process and will comment publicly on the draft revisions during the second public comment period.

Data and Reports

Through the Data and Reports Subcommittee, the SSEAC offered to continue its involvement with the stake holder's group as VDOE prepared the annual State Performance Plan/Annual Performance Report (SPP/APR). The stake holder's group met once and included representation from the committee. The committee made the following recommendations to the VDOE concerning reporting data to the public:

- Indicators 15-20 in the SPP would be reported to the public;
- The format of the Oklahoma [public report] example be included in the school report card by the LEA; and
- In lieu of a large stakeholder group, a group of "test drivers" would be used to look at the reports and determine if they are in a useful and understandable format.

Further discussion about the SPP included suggestions about formatting, linking and integrating information about students with disabilities into the School Report Cards section of the VDOE.

The committee requested that a report comparing LRE (least restrictive environment) data to Standard of Learning performance data be presented to the SSEAC at the April 2007 meeting. The committee also requested further examination of graduation data including details about graduation/completion for students with disabilities. SSEAC members will be invited to participate in the discussion about format issues in reporting the SPP/APR school division data to the public. The Data and Reports Subcommittee recommended that VDOE should host conference call sessions with division superintendents and special education directors to share school division data from the SPP/APR.

Constituency Involvement

The Constituency Involvement Subcommittee reviewed sample flyers to address ways that constituents can contact SSEAC members. Additionally, the subcommittee discussed ways in which materials could be disseminated, along with information pertinent to SSEAC matters.

The subcommittee recommended that the Department of Education continue to send the flyer out to local special education directors, parent resource centers, and local special education advisory committee chairs as appropriate to the region in which the meeting is planned. The flyer should be distributed at least one month prior to the meeting date.

Based on a recommendation by the subcommittee, the SSEAC voted to support the Virginia Board for People with Disabilities' (VBPD) effort to develop and maintain a database of contact information for individuals interested in special education. The State Special Education Advisory Committee will assist in this effort by sharing the sign-up/participant lists collected at its public comment and forum opportunities with Virginia Board for People with Disabilities for addition to the database.

The constituency involvement subcommittee has designed a flyer that will be disseminated to a large base of constituents. The one page document is designed to be used by all SSEAC members in networking opportunities. The information on the flyer includes a calendar of all SSEAC meetings during the administrative year as well as a list of members and their constituencies.

The SSEAC remains committed to meeting in various regions of the state to afford opportunity for involvement in public forum and public comment by persons interested in special education issues. Through collaboration with the VBPD the constituency involvement subcommittee will formulate a database of persons with an interest in special education information.

Other Issues

Assessment and Accountability for Students with Disabilities
The SSEAC continues an ongoing dialogue on issues related to the inclusion of students with disabilities in Virginia's accountability system. During 2006-2007, the committee continued to receive updates on the Virginia Grade Level Alternative (VGLA) and the Virginia Alternative Assessment Program (VAAP). Results of the first year of administration of the revised VAAP were reported. The SSEAC will continue to monitor the implementation of the VAAP and the VGLA and will receive progress reports as the VDOE begins development of the newly authorized modified achievement standards.

Secondary Transition
The SSEAC continues a strong interest in effective transition programs for students with disabilities. At the October meeting held in Harrisonburg, the committee received an extensive overview of transition initiatives in the Region 5 area, including those operated by local school divisions/regional programs, James Madison University, and Woodrow Wilson Rehabilitation Center.

Youth Self-determination
The SSEAC strongly supports programs that enhance self-advocacy skills on the part of students with disabilities. At its July meeting in Fairfax, the committee received a presentation about Virginia's "I'm Determined" project.

Future Issues

Listed below are areas on which the SSEAC will continue to monitor and advise the Virginia Board of Education and the Department of Education as they continue their work for the families and students of Virginia.

Assessment, Accountability, and Academic Achievement of Students with Disabilities
The SSEAC will continue to monitor the number of students that participate and are successful in the identified assessments administered in the state of Virginia. Additionally, we will examine avenues to assist LEAs with the professional development of IEP teams to ensure that they are adequately prepared to address appropriate accommodations that ensure equal access to curriculum and assessment. The SSEAC will also provide recommendations about new assessment(s) for students with disabilities**.**

State Performance Plan
The SSEAC will continue to be represented on various stakeholder workgroups as VDOE collects and analyzes 2006-2007 SPP/APR data for submission in 2008.

Virginia Regulatory Process
During the 2007-2008 year, the SSEAC will make public comment on the proposed revisions to the state special education regulations.

Response to Intervention (RtI)
The SSEAC will continue to follow the RtI initiative with interest and will request updates as the VDOE progresses through its implementation strategies. The committee will be especially interested in strong collaboration between special education and general education and in activities related to teacher training that will provide for skill development in data collection and use.

The Schools for the Deaf & Blind
The SSEAC has received periodic updates as the decisions regarding consolidation of the two schools for the deaf and the blind. The committee will continue to monitor the needs of the constituents as the changes are made in both locations.

Access to the General Curriculum in the Least Restrictive Environment
The SSEAC has frequently received public comments related to placements in self-contained classrooms and the lack of access to subject area specialists and inadequate peer instruction. The committee will continue to pursue comparative data and assess the barriers to least restrictive environment, as well as recommend improved access and appropriate accommodations and instruction.

National Instructional Materials Accessible Standards
The SSEAC has received frequent updates on the implementation of the National Instructional Materials Access Standards (NIMAS) and will continue to follow this initiative.

Personnel Development
The SSEAC will continue to monitor the future needs for highly qualified teachers.

Youth Self-determination Projects
The SSEAC will continue to follow VDOE's self-advocacy initiative and will request periodic updates from staff.

Staffing Standards
The SSEAC will consider current staffing standards and the need for lower teacher/student ratios in special education programs to more adequately meet the needs of students with disabilities.

Appendix A

Mission and Structure

The State Special Education Advisory Committee (SSEAC) for the Commonwealth of Virginia is organized and functions in accordance with the mandate in the Rules and Regulations for the Administration of the Individuals with Disabilities Education Act (IDEA) and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia.* The committee's functions include the following:

1. Advise the state education agency (SEA) of unmet needs within the state in the education of children with disabilities;
2. Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities;
3. Advise the SEA in developing evaluations and reporting on data to the U.S. Secretary of Education under section 618 of the Act;
4. Advise the SEA in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Act;
5. Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities;
6. Provide advice on eligible students with disabilities in adult prisons that have been convicted as adults and incarcerated in adult prisons;
7. Review the policies and procedures of state-operated programs, the Virginia School for the Deaf and Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton; and
8. Prepare and present an Annual Report to the Virginia Board of Education and the Superintendent of Public Instruction. This report shall be made available to the public.

Appendix B

Membership

The committee is composed of representatives of stakeholder groups as prescribed by IDEA. These individuals have a common interest in meeting the educational needs of children and youth with disabilities throughout the commonwealth. The membership includes:

- eight parents of children with disabilities
- two individuals with disabilities
- a teacher
- a representative of institutions of higher education that prepare special education and related services personnel
- a local superintendent
- a local special education director
- a representative of an organization concerned with transition services
- a representative of other state agencies involved in the financing or delivery of related services to children with disabilities
- a representative of the foster care system
- a representative of a correctional agency
- a representative of private schools and public charter schools.

Members are appointed by the Board of Education to a three-year term and are eligible for reappointment for an additional three-year term. Individual citizens and organizations are invited to nominate candidates for appointment to the committee. Terms of membership are staggered to assure continuity. Members are reimbursed for expenses incurred while attending meetings; however, the membership serves without compensation. The committee is staffed by designated personnel from the Department of Education who are knowledgeable in the field of special education. The department also provides technical and clerical assistance to the committee.

Appendix C

Motions

During the 2006-2007 year, the SSEAC made and passed the following motions:

- That the public comment guidelines be revised.
- That the full committee approve that the executive committee complete the edited annual report to be submitted to the Board of Education.
- That the Office of Dispute Resolution and Administrative Services [Division of Special Education and Student Services, VDOE] contact the states with readable procedural safeguards documents worth emulating, as determined by the Just Children research, to determine if those documents serve as the OSEP [Office of Special Education Programs]-approved procedural documents for those states.
- That Section 4 of Article VII of the Bylaws be changed to: “Members shall be appointed by the BOE [Board of Education]. A membership committee shall recruit potential members through a nomination process, review the nominees to assure that they meet the criteria for membership, and submit the list of names to the Virginia Board of Education or the Virginia Department of Education as directed by the Virginia Board of Education for appointment."
- That the SSEAC make the following recommendations to the VDOE: a) that Indicators 15-20 in the SPP be reported to the public; b) that the format of the Oklahoma example be included in the school report card by the LEA; and c) that we do not need a larger stakeholder group but instead need a large group of "test drivers" to look at the reports and determine if they are understandable.
- That the State Special Education Advisory Committee support the Virginia Board for People with Disabilities’ effort to develop and maintain a database of contact information for individuals interested in special education. The State Special Education Advisory Committee will assist in this effort by sharing the sign-up/participant lists collected at its public comment and forum opportunities with Virginia Board for People with Disabilities for addition to the database.

Resolutions

- Whereas the fact that the federal government is requiring that the Virginia Department of Education monitor the status of students with disabilities who have exited school and the fact that there are multi year waiting lists for many such services for children and adults with disabilities, the SSEAC recommends to the VBOE that they work with the state legislature to reduce waiting lists and also emphasize communication of availability of Medicaid waivers and availability of joining waiting lists to parents and guardians beginning at transition from preschool to elementary school and continuing through high school transition planning.

Appendix D

TO: Dr. Judy Douglas, Director, ODR
FROM: Anne Fischer, Chair, State Special Education Advisory Committee
RE: Public comment concerning Virginia's drafting of the IDEA regulations
DATE: February 23, 2007

I'm writing to provide public comment on behalf of the State Special Education Advisory Committee (SSEAC). As you are aware, the SSEAC is a diverse group of stakeholders dedicated to addressing the needs of children with disabilities. We would like to take this opportunity to note our appreciation to you and your staff, for your time and sharing of information, as the process of revising the regulations moves forward.

The SSEAC recommends the following:

a. Expand the Forward to include information that sets the stage for the people who will need to access the regulations: teachers, administrators, parents and students. Specifically, the SSEAC encourages you to include:
    - An overview of the regulations, written in easy-to-access language,
    - IDEA 2004 intent language, including the emphasis on "high expectations," and "educating children in the regular classroom, so they can meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible." (Section 1400(c)(5)(A)) (from the "Findings" section, IDEA 2004)
    - Information about best practices
    - IDEA 2004 purposes language – especially the provision that special education services should be designed to meet students' "unique needs and prepare them for further education, employment and independent living." (Section 1400(d)(1)(A))

The fiscal and administrative impact will be minimal, because this language will simply provide clarification and background information.

b. School Discipline: Restore the "11th Day Rule," so that functional behavioral assessments (FBAs) and Behavioral Intervention Plans (BIPs) will be provided for all students with disabilities who receive a long-term suspension or are suspended several times with a pattern of disciplinary actions. Federal law presumes that local school districts are implementing FBAs and BIPs, but frequent testimony to the SSEAC shows that Virginia has many schools which are not yet providing those services to improve students' conduct and teach skills which will be necessary in the future. The fiscal and administrative impact will be minimal, because the Virginia regulations currently require this.

c. Continue the provision for Local Advisory Committees (LACs) as it is currently written in the Virginia regulations.

d. Continue to require short-term objectives. Mutual collaboration is enhanced through communication, and families and students can work only communicate if they have adequate information. In addition, short-term objectives help families and teaching staff to realize that children are making progress, even if annual goals aren't fully mastered. The fiscal and administrative impact will be minimal, because the Virginia regulations currently require this.

e. Continue the current consent protections in Virginia's regulations. This will ensure that parental permission is required before students' special education services can be terminated, and before most significant changes in services can be implemented. The fiscal and administrative impact will be minimal, because Virginia's regulations currently require this.

f. Ensure "refusing" services is distinguished from not signing an inadequate IEP. Under the new federal regulations, if a parent "refuses" the initial provision of services, the LEA does not have to provide FAPE for those services. Often parents will not sign IEPs even though they agree with the services offered on the IEP, because they do not agree that the IEP is adequate (they see a need for more services, accommodations, etc.). VDOE should make sure that the regulations make it clear that this situation is different from a situation in which a parent "refuses" for their child to receive special education or simply doesn't want any of the services on the IEP. The fiscal and administrative impact will reduce costs, because disputes will be prevented.

g. Continue the 65-business-day timeline for evaluation and eligibility to ensure that special education services start as quickly as possible. The 60-calendar-day timeline in the federal regulations does not include eligibility determination. There will be no fiscal and administrative impact, because Virginia's regulations currently require this.

h. Define surrogate parents' roles, and provide full definitions for other non-biological parents. The fiscal and administrative impact will be cost and time savings, because clear definitions will prevent disputes and save costs by not having to re-schedule meetings, and losing teaching/learning time unnecessarily.

i. Resolution sessions:
    - Participation: parents and school officials decide collaboratively on mutually agreeable members to participate from the LRE, while meeting regulatory requirement that the LEA send at least one person who has decision-making authority. Role definition: parents speak on their own behalf, but can ask the advocate or attorney to speak as well. The fiscal and administrative impact will reduce costs, because disputes will be prevented.
    - Confidentiality protections: add language that mirrors mediation protections. Rationale: parents and schools benefit from knowing they can be forthcoming in seeking a final solution and preventing the start-up of Due Process. Fiscal and administrative impact will be cost-savings; because more effective

Resolution Sessions will save significant costs by deterring Due Process filings.

j. Clarify responsible LEA for IEP development and services for residents of group homes. Include information that emphasizes that FAPE cannot be interrupted when a child has moved to a group home, and clarify who bears responsibility in each type of situation (court placed, school placed, parentally placed). The fiscal and administrative impact will reduce costs, because disputes will be prevented.

k. Clear up conflicts between regulations, code (e.g., CSA), Standards of Accreditation (e.g., clarifying a student's anticipated diploma type should not limit access to general education courses or deter high expectations for performance on more challenging assessments). Include emphasis that the IEP team should provide input and discuss long-term expectations, fulfilling IDEA 2004 goals of high expectations and maximizing independence. The fiscal and administrative impact will reduce costs, because disputes will be prevented.

l. Clarify basis for referrals for evaluations to address IDEA 2004 new language about functional performance: Maintain current Virginia provisions, to and include language clarifying that a student's "Educational Performance" means all aspects of a child's performance in school, including but not limited to academic achievement, performance on benchmark and other tests, as well as functional performance (e.g., behavioral or social problems). Students who are having educational performance problems in school – either academic or functional performance problems – are eligible for referrals, and should be evaluated.

m. Clarify that students with functional problems which are the result of a disability are eligible for special education and entitled to a FAPE under the IDEA.

n. Maintain current process for referrals for evaluations. Currently, Virginia allows anyone to make a referral for special education evaluations. The federal regulations only allow for requests for evaluations from parents or a public agency. This is overly limiting and the current process should be maintained.

o. Clarify process and requirements related to placements in the Least Restrictive Environment. Educators and families need to know children's rights and make appropriate decisions concerning children's opportunities to learn the general education curriculum in regular education classrooms. Information found in various parts of the Federal Regulations and Virginia's guidance documents should be compiled into one clear section which clarifies LRE-related definitions, process and responsibility.

p. Continue providing IEP progress reports at the same intervals, or more frequently, as they are provided for students without disabilities. Regular communication about children's progress helps parents to reinforce learning and be involved in their children's education, and helps maintain high expectations and will more fully

include students with disabilities in accountability progress.

q. Continue to require transition planning at age 14. This is especially important for students who are unlikely to continue receiving special education services through the age of 21, and for students with the most intensive needs. It will also help ensure that IDEA 2004's mandates for maximizing independence, to the maximum extent possible, are fulfilled.

The SSEAC appreciates the opportunity to provide input into this process, and we hope that you will contact us with any questions or concerns you have about these comments.

Sincerely,
Anne Fischer, Chair

Board of Education Agenda Item

Item: N. **Date:** September 26, 2007

Topic: Report on Postsecondary Readiness Studies Authorized by the Board of Education

Presenter: Dr. Patricia I. Wright, Chief Deputy Superintendent of Public Instruction

Telephone Number: 804-225-2979 **E-Mail Address:** Patricia.Wright@doe.virginia.gov

Origin:

__X__ Topic presented for information only (no board action required)

____ Board review required by
- ____ State or federal law or regulation
- ____ Board of Education regulation
- ____ Other: _____

___ Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

____ No previous board review/action

__X__ Previous review/action
date January 10, 2007
action The Board of Education authorized the Virginia Department of Education to conduct studies to determine factors contributing to success in postsecondary education.

Background Information:
In January 2007, the Board of Education authorized the Virginia Department of Education to conduct studies to determine factors contributing to success in postsecondary education. As part of that effort, the Department of Education requested ACT and the College Board to conduct studies comparing their respective standards for postsecondary readiness to the Virginia Standards of Learning (SOL) in English/Reading and Mathematics. These studies were conducted at no cost and in collaboration with Department of Education content specialists and the executive director for research and strategic planning. The Department of Education is providing the Board with this informational summary of findings from these independent studies.

Summary of Major Elements
Both the College Board and ACT found that Virginia's mathematics and English standards showed strong alignment with their respective postsecondary readiness standards. In both studies, there was stronger alignment with Virginia's mathematics standards than there was in English. The study results offer the Department excellent information that will be useful when the Standards of Learning for mathematics and English/Reading are reviewed in 2009 and 2010, respectively. The College Board and ACT analyses as well the American Diploma Project (ADP) alignment study, when completed, will be provided to the Board's review committees for consideration.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education accept the report.

Impact on Resources: These studies were conducted independently and free of charge by the College Board and ACT. No immediate action is required.

Timetable for Further Review/Action: No further action is required at this time. The results will be considered during the review of the Mathematics and English Standards of Learning in 2009 and 2010, respectively.

Summary of Studies Assessing the Alignment of Virginia's Mathematics and English Standards of Learning for Postsecondary Readiness

The Department of Education requested the College Board and ACT to conduct studies comparing their respective standards for postsecondary readiness to the Virginia Standards of Learning (SOL) in English and Mathematics. The College Board conducted an analysis of the alignment between the College Board's Standards for College Success and Virginia's Standards of Learning in mathematics and English grades 6 through 12. They also provided a comprehensive synthesis of findings and recommendations to strengthen Virginia's standards. ACT conducted a study to determine the alignment between Virginia's SOL grades 8-12 and ACT's College Readiness Standards. The results provide information on the one-to-one alignment between Virginia's SOL and ACT College Readiness standards.

Mathematics

Both the ACT and the College Board analyses showed strong alignment between the Virginia Standards of Learning and their respective standards for postsecondary readiness. According to the College Board's analysis, the cognitive complexity[1] required for students to meet the performance expectations is generally consistent across the Virginia Standards of Learning and the College Board Standards for Success. The only courses in which aligned standards differed in cognitive complexity were Geometry and Probability and Statistics. In both courses, the difference in cognitive complexity was small but potentially meaningful, and the College Board provided specific recommendations for Virginia to consider when it revises the mathematics standards. ACT also noted that "for those College Readiness Standards not covered in the Virginia Standards of Learning, it is generally the case that the skill is listed within the Virginia Standards of Learning but not explicitly at the rigorous level of the College Readiness Standards."[2]

As can be expected when different groups develop learning expectations, the alignment studies also revealed differences between Virginia's SOL and the standards developed by the College Board and ACT. One notable difference between the College Board and Virginia's standards was the treatment of learning expectations for data analysis, probability, and statistics. The College Board Standards for Success integrate learning expectations for data analysis, probability, and statistics throughout its prescribed coursework in the middle grades and four high school courses: Algebra I, Geometry, Algebra II, and Precalculus. In Virginia's SOL, these concepts are covered in middle school mathematics but not in the breadth of coverage that the College Board recommends. In high school, Virginia's standards cover the concepts of data analysis, probability, and statistics primarily in the two courses: Probability and Statistics, and Mathematical Analysis. The College Board's alignment experts suggested that Virginia consider strengthening these concepts throughout the standards to ensure a clear developmental progression through middle school and throughout high school courses to "articulate a clear developmental learning progression that will prepare students for the quantitative and statistical literacies that are increasingly expected in college and the 21st-century workplace" (College Board, pp. 4).[3] The College Board also suggested that embedding these learning objectives in coursework

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[1] The College Board used Norman Webb's Depth of Knowledge classification to compare the cognitive complexity of Virginia SOLs and the College Board Standards for College Success. The four levels of classification are: 1) Recall, 2) Skill/concept, 3) Strategic thinking; and 4) Extended thinking.

[2] Sherri Miller, Assistant Vice President for EPAS Test Development, ACT. Personal communication, July 23, 2007.

[3] College Board. (2007). Report on the Rigor and Alignment to College Readiness of the Virginia Standards of Learning:

throughout students' mathematics education would improve the alignment between instructional time focused on data analysis and probability with the National Assessment of Educational Progress (NAEP) Mathematics framework. As well, they recommend strengthening the cognitive complexity of these standards. The ACT alignment revealed several standards in their categories of Interpretation of Data, Scientific Investigation, and Evaluation of Models, Inferences, and Experimental results that were not aligned to Virginia's SOL. Several of these ACT standards have features in common with the College Board's standards that were recommended as models for Virginia to use to help strengthen the complexity of Virginia's standards in probability and statistics.

The College Board analysis also revealed differences between the courses recommended by the College Board in preparation for College, and the course offerings in Virginia's high schools. In particular, Virginia's Standards of Learning for Algebra II, Trigonometry, and Mathematical Analysis are similar in content to the College Board's Standards for Success in Algebra II and Precalculus. According to the College Board's alignment work, Virginia's Algebra II course has more rigorous standards than those included in the College Board's Algebra II Standards for College Success. However, the College Board research staff was unable to conduct a one-to-one course-level alignment between Virginia's standards and the College Board standards for Virginia's Trigonometry and Mathematical Analysis courses. Nonetheless, when Virginia's three courses were compared to the two-course sequence recommended by the College Board, the vast majority of the College Board Standards for College Success are covered in Virginia's SOL.

Despite the overall alignment of standards when all courses were considered, this difference in course options led the College Board to suggest that Virginia consider reorganizing the core material in Algebra II, Trigonometry, and Mathematical Analysis into a two-course sequence of Algebra II and Precalculus. This change would align Virginia's SOL with the College Board Standards for College Success. The College Board argues that this change would better prepare more students for college-level material. It should be noted that Virginia's two-course sequence of Algebra II/Trigonometry and Mathematical Analysis is intended to serve this purpose. The Algebra II/Trigonometry Standards of Learning combine all of the standards for Algebra II and Trigonometry into one course. In reviewing the mathematic standards, it will be important for Virginia to consider the typical courses that students take in relation to the specific findings provided by the College Board to ensure that all students are exposed to instruction associated with rigorous standards.

The College Board recommendations also identified specific standards in the SOL and supporting information in the Curriculum Frameworks that can be strengthened to better prepare more students for college-level material. As well, the ACT alignment revealed differences between the SOL and ACT's College Readiness Standards. These analyses will provide valuable information that will support the State's ability to enhance the standards for postsecondary readiness in the next review.

English

The overall alignment between the College Board Standards for College Success and Virginia's English Standards of Learning was considered strong. The College Board concluded that "in the sub-disciplines of reading, writing, and research, almost every language arts performance expectation included within the College Board Standards has been addressed at some level from grades 6-12" (pp. 5).[4] The College Board concluded that the cognitive complexity of Virginia's standards was relatively stable across grades, whereas the complexity consistently increases in the College Board's Standards for College

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Executive Summary. New York: The College Entrance Examination Board.

[4] ibid

Success. ACT concluded that Virginia's English SOL "cover almost all of the skills within the College Readiness Standards but do not explicitly cover the application of many of those skills to increasingly more challenging and complex text."[5]

The Standards of Learning cover, at some level, nearly all of the College Board's Standards for College Success. Nonetheless, the College Board concluded that Virginia's English SOL do not provide a "progressive development of knowledge and skills as students take on increasingly sophisticated texts and tasks" (pp.9),[6] and offered several suggestions to improve the English SOL. These recommendations were intended to support Virginia's ability to establish a more explicit and consistent developmental progression within the standards and associated Curriculum Frameworks across grades. The College Board suggests that improving the vertical alignment between grades provides an explicit framework that supports increasing the cognitive complexity of learning objectives and performance expectations as students advance through the grade level standards.

The College Board also recommended that Virginia consider expanding the emphasis on communications in the Standards of Learning. The analysis shows that Virginia's SOL cover "most of the important features of communication" (pp. 36)[7] somewhere in the standards, but suggested that the English SOL need further development of learning expectations in communications skills. Similarly, ACT's analysis suggested that the oral language component of Virginia's standards could be strengthened by incorporating interviewing skills to gain information, and to increase the standards for oral presentations. ACT's standard related to interviewing skills has several objectives in common with the receptive communication standards in the College Board's Standards for College Success, which the College Board analysis suggested could be strengthened. As well, both the College Board and ACT analyses suggest that Virginia's performance expectations in media literacy and credibility of sources are less rigorous than is College Board or ACT standards.

Overall, the College Board's and ACT's analysis provided Virginia with valuable information that will support the state's ability to enhance the Mathematics and English standards for postsecondary readiness when they are reviewed in 2009 and 2010, respectively.

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[5] Sherri Miller, Assistant Vice President for EPAS Test Development, ACT. Personal communication, July 23, 2007.

[6] College Board. (2007). Report on the Rigor and Alignment to College Readiness of the Virginia English Language Arts Standards of Learning. New York: The College Entrance Examination Board.

[7] *ibid*