

VIRGINIA DEPARTMENT OF EDUCATION
Division of Special Education and Student Services
Office of Dispute Resolution & Administrative Services

**ANNUAL REPORT
OF THE
DISPUTE RESOLUTION SYSTEMS
AND
ADMINISTRATIVE SERVICES**

- Due Process Hearing System
- Mediation Services
- Complaints Resolution System
- Administrative Services

Reporting Period: July 1, 2008– June 30, 2009

Reporting Date: September 1, 2009

This review serves to assist the Virginia Department of Education (VDOE) in:

- ensuring compliance with the federal and state mandates governing the dispute resolution systems;
- identifying future training activities, particularly for hearing officers and mediators;
- identifying and addressing systemic issues impacting local school divisions; and,
- assessing the strengths and challenges of each system.

This analysis serves as a reporting mechanism to VDOE's management team responsible for the development of VDOE's State Performance Plan to the U.S. Department of Education's Office of Special Education Programs and for other data collection reports. It also provides information on this office's systems to VDOE staff and consumer groups listed at the end of this report.

Questions regarding the content of this report may be directed to the Office of Dispute Resolution and Administrative Services at (804) 225-2013. Information regarding the office's services is available on the web at: <http://www.doe.virginia.gov/VDOE/dueproc>



PART I DUE PROCESS HEARING SYSTEM

- Baseline Data
- Hearing Officer Performance
 - ✓ Management of Hearings
 - ✓ Decisions
 - ✓ Managing the 45-Day Timeline
- Recertification of Hearing Officers
- Training of Hearing Officers
- Implementation Plans
- Follow-up System for Implementation Plans
- ODR/AS Initiatives

A. BASELINE DATA

Number of Hearing Requests

	Reporting Periods		
	2008-09	2007-2008	2006-2007
Number of requests	81	87	69
Number dismissed/withdrawn ¹	61	62	48
Number of decisions rendered after full hearing ²	9	16	8
Number pending as of 6-30 of relevant report year	11	9 ³	13 ⁴

¹Cases closed without a hearing due to a mediation, or settlement agreement, or request for withdrawal. In one case, there was a determination on a Motion to Dismiss that substantially all of the pending claims should be dismissed and the parent withdrew the request as to the remaining claims.

²Redacted decisions are posted on the web: <http://www.doe.virginia.gov/VDOE/dueproc>. In one decision it was determined that the statute of limitations barred substantially all of the claims, the parents withdrew their request after the determination on the Motion to Dismiss based on the statute of limitations.

³The previously pending 9 cases were concluded during 2008-09; six (6) were dismissed/withdrawn, three (3) decisions were rendered after full hearing.

⁴The previously pending 13 cases were concluded during 2007-08; seven (7) were dismissed/withdrawn, five (5) decisions were rendered after full hearing; one (1) was dismissed by the Hearing Officer upon a pre-hearing motion.

Number of Hearing Requests – 5-Year Period

Year	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
Total Requests	81	87	69	98	107

 Number of Decisions

	Reporting Periods		
	2008-09	2007-2008	2006 – 2007
Number of Decisions	9	16	8
Initiating Party:			
Parent	7	12	8
LEA	2	4	0
Prevailing Party:			
Parent	1	1	1
LEA	8	12	6
Split	0	3	1

 Additional Case Information for 2007-2008 Cases

During this reporting period, 3 decisions for cases initiated in 2007-08 were issued.

Issues	Prevailing Party	
	LEA	Parent
IEP:		
✓ Parental Participation	1	0
FAPE	3	0
Discipline:		
✓ Manifestation	2	0

 Issues/Sub-issues and Disposition for 2008-2009 Cases

Issues / Sub-issues	2008 – 2009			
	# Issues	Prevailing Party		
		LEA	Parent	Split
Total case issues	25	24	1	0

Issues / Sub-issues	2008 – 2009			
	# Issues	Prevailing Party		
		LEA	Parent	Split
IEP	12			
Placement	4	4	0	0
Services	2	2	0	0
Development	2	2	0	0
Parental Participation	4	4	0	0
Due Process	4			
Procedural violations	0	0	0	0
Consent override	1	1	0	0
Tuition reimbursement	2	2	0	0
Statute of Limitations	1	1	0	0
Discipline	5			
Manifestation review procedure	1	1	0	0
Direct relationship	2	2	0	0
Implementation of IEP	2	2	0	0
Eligibility	2			
Category	2	2	0	0
Other	2			
ESY	1	1	0	0
LRE	1	0	1	0

Issues and Disposition – Three-Year Period

Issue	2008 - 2009			2007 - 2008			2006 - 2007		
	Total	LEA	P	Total	LEA	P	Total	LEA	P
IEP	12	12	0	18	15	3	7	7	0
Due Process	4	4	0	7	6 ⁵	1	3	2	1
Discipline	5	5	0	8	6	2	2	0	2
Eligibility	2	2	0	2	2	0	0	0	0
Other	2	1	1	4	3	1	0	0	0
Totals	25	24	1	39	32	7	12	9	3

Hearing Officers and School Divisions with hearing requests

	Reporting Periods		
	2008 – 2009	2007 – 2008	2006 - 2007
Number of Hearing Officers	26	27	30
✓ assigned to hearings ⁶	22 ⁷	23	27
✓ assigned more than once	21	20	14
Number of school divisions involved in hearing requests	35	35	33 ⁸

Resolution Sessions

- The IDEA '04 imposed an additional requirement that upon receipt of the request for due process, the school division is required to schedule a Resolution Session with the parent. This provides both parties with the opportunity to resolve the issue. The Resolution Session is not the same option as mediation. If both parties agree to substitute mediation for the resolution session, the 30-day resolution

⁵The split issue was added to the LEA total as the issue resolution was more beneficial to the LEA in that decision.

⁶Three of the hearing officers serve: 2 as complaint appeal reviewers and 3 as hearing officer evaluators. They are required to complete the same training requirements as the other hearing officers; however, while serving as a complaint appeal reviewer or hearing officer evaluator, they are not appointed to due process hearing cases.

⁷One additional hearing officer received a request to be assigned to a case but declined the appointment.

⁸One case involved the VDOE as a co-party and one case involved State-Operated Programs.

period applies but a resolution session is not held. If both parties waive resolution, the due process request moves forward in accordance with the required timelines.

Resolution Sessions				
Reporting Year	Number of Cases	Resolution Sessions Held ⁹	Agreement Reached	Waived
2005-2006	97	59	16	6
2006-2007	69	39	17	12
2007-2008	87 ¹⁰	53	16	13
2008-2009	81 ¹¹	44	17	9

□ Trends

- The number of requests for due process hearings (81) decreased by 6 over last year's reporting period (87). This total falls below the 5-year average (442 total cases, averaging 88.4 cases per year) by approximately 7 cases. In the previous reporting period, the 87 total requests fell below the then-5-year average (488 total cases, averaging 97.6 cases per year) by approximately 11 cases.¹²
 - Significantly, the number of hearing requests declined between 2003 and 2009; although the number of requests increased in 2007-08, it remained below the five-year average. No single factor can be identified as contributing to the total number of due process requests, although effective mediation and school division efforts in early dispute resolution may have contributed to this total.
- A total of 35 school divisions were involved in hearing requests, matching the number for the prior reporting period (35). No particular school division or region experienced an influx of cases in this reporting period.

⁹Cases where sessions were not held involved a written waiver of the session, substitution of mediation for the resolution session, or resolution of the case prior to the scheduled resolution meeting.

¹⁰In three (3) pending cases, there was not sufficient time for a resolution session to be held during the current reporting period. In four (4) cases, the hearing officer dismissed the case prior to a resolution session. In seven (7) cases, the parent withdrew the request prior to the meeting. In three (3) cases, a settlement agreement was reached before the meeting. In four (4) cases, the LEA initiated the due process hearing.

¹¹In two (2) pending cases, there was not time for a resolution session to be held during the current reporting period. In three (3) cases, the hearing officer found the notice was insufficient and dismissed the cases. In seventeen (17) cases, the parent withdrew the request prior to the meeting. In five (5) cases, the LEA initiated the due process hearing. In ten (10) cases, the resolution session was waived in favor of a mediation session.

¹²See Annual Report for Special Education, Office of Dispute Resolution and Administrative Services 2007-2008; Annual Report for Special Education, Office of Dispute Resolution and Administrative Services (107 requests in 2004-05; 98 in 2005-06; 69 in 2006-07).

- Consistent with total year data for 2007-08, data from this current reporting period identified three repetitive themes:¹³
 - ✓ Parents are the more frequent initiating party.
 - ✓ LEAs are more often the prevailing party.
 - ✓ Issues focus primarily on IEP concerns.
- The number of hearing decisions (9), dropped sharply—over 40%—from the previous year reporting period (16 in 2007-08), but exceeded the number reported in 2006-07 (8) by one. Interestingly, the 2006-07 figure (8) was also about half of the prior year's number (15 in 2005-06).
- The number of case issues (25) addressed in this reporting period was about 64% of the number of case issues (39) reported in 2007-08; however, the 39 reported in 2007-08 had more than tripled the number of case issues reported (12) in 2006-07. Similar to last year's figures, IEP issues again comprised the greatest portion of case issues (12/25, or about 48% of case issues); IEP issues claimed about 46% (18/39) of total case issues in 2007-08.
- For four years, the number of hearing officers decreased (26 in 2008-09; 27 in 2007-08; 30 in 2006-07; 35 in 2005-06). The reduction in the number of hearing officers and their increased experience at the pre-hearing level are positive outcomes of the increased training requirements required by IDEA 2004 and the implementing regulations effective in October 2006 (34 C.F.R. § 300.511(1) (ii), (iii), (iv)). Hearing officers are receiving more assignments. Reviewing matters more frequently—even if only at the pre-hearing level, hearing officers further enhance those skills addressed in training.
- Even though the number of hearing officers has significantly decreased since 2001-02, a smaller cadre of hearing officers would increase the potential for their hearing more fully adjudicated cases, and thus, improve their ability and skills to manage hearings more effectively, enhance the quality of their decisions, and be even more grounded in the highly complex area of special education law.

B. HEARING OFFICER PERFORMANCE – MANAGEMENT OF THE HEARING

Consumer Evaluation

Evaluations are sent to both parties following the issuance of each decision in fully adjudicated cases.

¹³See Annual Report for Special Education, Office of Dispute Resolution and Administrative Services 2007-2008.

The director of the Office of Dispute Resolution and Administrative Services (ODR/AS) reviews each evaluation response. The coordinator of due process services checks any concerns against the case record and may call the party(ies) for clarification. The director or coordinator contacts the hearing officer to review issues of concern and as necessary, issues a written cautionary notice to the hearing officer regarding any identified concerns. Additionally, as necessary, the director or coordinator may meet with the hearing officer to review the application of the regulations.

	Reporting Periods		
	2008-2009	2007-2008	2006-2007 ¹⁴
Number of evaluations sent	39	66	45
Number of responses	15	13	14

Trends

- The number of consumer evaluations (39) significantly decreased this reporting period by 27. This decrease is consistent with the decline in the number of requests for due process hearings.
- The responses indicated that the hearing officers remain strongly consistent in the areas of:
 - ✓ Scheduling agreeable dates, times, and locations;
 - ✓ Maintaining a fair and impartial atmosphere;
 - ✓ Being knowledgeable of the requirements of both federal and state laws and regulations; and
 - ✓ Making prompt contact with both the parent and the LEA.
- Areas showing continued improvement:
 - ✓ Informing the parties of the availability of mediation;
 - ✓ Issuing the decision in the required timelines; and
 - ✓ Helping ensure that witnesses needed for the hearing were present.

¹⁴The reported numbers are not related to the number of hearing requests for the reporting period. Rather, they relate to the decisions received by ODR/AS for the reporting period, which includes those cases carried over from the previous reporting period.

- Areas of concern are raised with the individual hearing officer and as necessary, notice is sent to the individual regarding any need for improvement or conditional recertification status.

□ **Evaluation of the Hearing Officers**

On April 1, 2006, ODR/AS established a system for VDOE evaluating each hearing officer's management of pre-hearing conferences and hearings. VDOE developed and disseminated to its hearing officers operational procedures for this system; evaluation forms; and trained 3 of the hearing officers to serve in the role of evaluator. They are required to complete the same training requirements as the other hearing officers; however, while serving as an evaluator, they are not appointed to due process hearings. The evaluators have been assigned to all pending cases and have provided evaluations in all cases where they attended hearings, either in person or telephonically. The evaluations have been positive and have promoted the overall quality of the hearing process. When areas of concern are identified by the evaluator, the concerns are reviewed with the hearing officer. The ODR/AS director and coordinator of due process services review all evaluations and follow up, as necessary, with the respective hearing officer.

C. HEARING OFFICER PERFORMANCE - DECISION

ODR/AS' director and coordinator of due process services review each hearing officer's decision.¹⁵ Additionally, the coordinator reviews and monitors all pre-hearing reports, orders, and correspondences. Either the director or coordinator contacts the hearing officers if errors are identified relative to:

- apparent bias to either party
- correct use of citations
- readability
- correct appeal information
- other errors, such as incorrect names or conflicting data

ODR/AS may not review the decision for errors of law since that is reserved for appellate review. As necessary, the director or coordinator contacts the hearing officer with any concerns and, in certain instances, requires the hearing officer to issue an error correction or a statement of clarification. These procedures are consistent with VDOE's management responsibilities for the due process system. (8 VAC 20-81-210)

□ **Trends**

- Decisions and pre-hearing reports continue to be consistent in:

¹⁵Redacted decisions are posted on the web: <http://www.doe.virginia.gov/VDOE/dueproc>

- ✓ writing in a manner both the LEA and parents can understand;
 - ✓ advising both parties of the option of mediation;
 - ✓ clearly identifying what was being ordered as a result of the decision; and,
 - ✓ including references to statutes or regulations that support the conclusions reached by the hearing officer.
- Fewer hearing officers erred this reporting period relative to:
 - ✓ advising the parties of their appeal rights; or
 - ✓ documenting that extensions of timelines were in the best interests of the child.
 - Only one hearing officer failed to meet the mandated timelines, but only by a single day (*see* footnote 17).

D. HEARING OFFICER – TRAINING

In addition to the training requirements of the Virginia Supreme Court, the VDOE is responsible for training hearing officers on the legal aspects of special education (laws, regulations, and case law updates) and management of special education hearings. For the 2008-09 school year, hearing officers attended a two-day training event in May 2009, which focused on:

- ✓ IDEA 2004 and IDEA 2006 Regulations
 - case law update
 - IDEA 2004 and 2006 regulatory requirements for hearing officers with special attention to the management of the hearing; resolution sessions; and challenges to the sufficiency of the notice
- ✓ Ethical issues that challenge attorneys as special education hearing officers
- ✓ Strategies in writing decisions and issues of concern for special education hearing officers
- ✓ Section 504 of the Rehabilitation Act of 1973 and its relationship to IDEA

In July of 2005, many of the changes mandated by IDEA 2004 became effective. In October of 2006, the implementing federal regulations became effective. During the

past three years, the hearing officers have been provided specific training and technical assistance for implementing these statutory and regulatory changes. The resolution period process continues to be a challenge to hearing officers' efforts to manage the timeline for the hearing process. In addition, hearing officers are receiving a greater number of pre-hearing motions in the form of due process notice sufficiency challenges. These motions have required additional pre-hearing conferences among the parties in efforts to provide greater focus to the ultimate hearings held. The year has included ongoing training in order to continue to facilitate continued acclimation of hearing officers to the statutory and regulatory changes in a variety of contexts.

Supplemental training activities this year have included, among other things:

- ✓ the use of the *Parents' Guide to Special Education Dispute Resolution*;
- ✓ the revision of Virginia's special education regulations;
- ✓ ODR/AS summaries and texts of Virginia and Fourth Circuit Court and U.S. Supreme Court decisions relative to special education cases for the 2008-09 year.

E. MANAGING THE 45-DAY MANDATED TIMELINE

Hearing officers are mandated to issue their decisions within 45 calendar days after the local school division receives the request for the hearing. The hearing officer may grant an extension only when it serves the best interest of the child. (8 VAC 20-81 210.P.9 of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*)¹⁶

VDOE identified the 45-day timeline as one of its target areas in its Continuous Improvement Monitoring Process Reports to U.S. Department of Education's Office of Special Education Programs (OSEP) (2002 and 2003); Annual Performance Report, 2004; and now the State Performance Plan (Indicator 17). VDOE developed and implemented a process that includes intensive monitoring and tracking of these timelines, training hearing officers on this subject, and issuance of notices to hearing officers who fail to document extensions. VDOE also assured Virginia's Code Commission that these efforts would address the concerns raised during the public hearings of the Administrative Law Advisory Committee. (VDOE Report to the Code Commission and ALAC, November 1, 2002)

¹⁶ These regulations were revised with an implementation date of July 7, 2009. The current citations are referenced throughout this document.

45-day timeline extensions with proper notice

	2008-2009	2007-2008	2006-2007
Total number of due process requests	81	87	69
Number of cases exceeding the 45-day timeline	3 ¹⁷	2 ¹⁸	0 ¹⁹

Trends

• The first level of data evidences a trend of cases not requiring extensions to complete the hearing process:

- ✓ 2006-07: All cases were completed within the 45-day timeline
- ✓ 2007-08: 2 out of 87 hearing requests involved extensions
- ✓ 2008-09: 2 out of 81 hearing requests involved extensions²⁰

Number of days over the 45-day timeline

	Reporting Periods			
	2008 – 2009	2007 – 2008	2006 – 2007	2005-2006
Total Cases	3	2	0	12
1 – 30 days	3	2	0	6
31 – 90 days	0	0	0	5
91 – 120 days	0	0	0	0
121 +	0	0	0	1

¹⁷In one case, the decision was issued one day after the 45-day timeline but was properly within the timeline since the final day was a Sunday and it was issued on the next business day. In one case, the hearing officer was ill on the final day of the 45-day timeline and he issued the case on the next day. Unfortunately, there was no extension to the 45-day timeline granted in this case. In two cases, an extension was properly granted citing the best interest of the children and the decision was issued within the extended timeline provided in the extension order.

¹⁸In one case, a hearing officer withdrew from the case. This case only exceeded the 45-day timeline by 20 days when a single extension was granted. In a second case, an extension was granted to allow for preparation of the transcript and hearing officer review of the record. This case only exceeded the 45-day timeline by 10 days. In a third case, the 45th day fell on a Sunday, so the decision was properly issued on the next business day, and thus is not included in this calculation.

¹⁹One case was completed on the 47th day but the 45th day was a Saturday. Since the case concluded on the next business day, this case properly concluded within the 45-day time limit, and thus was not reported here.

²⁰In one case, a hearing officer became ill on the final day of the 45-day timeline, but recovered sufficiently to issue the decision on the following day. Accordingly, no extension was granted in that case.

- The data indicates a general consistency in the current reporting period and the previous two reporting periods, with only three cases exceeding the 45-day timeline for the current reporting period, and a significant drop in extensions since 2005-06.
- The hearing officers are successfully documenting extensions during this reporting period. The coordinator of due process services employs an electronic tracking log to monitor all timelines and extensions to ensure that the extensions comport with regulatory requirements

Parties requesting extensions

	Reporting Periods			
	2008 – 2009	2007 – 2008	2006 – 2007	2005-2006
Parent	2 ²¹	2 ²²	1 ²³	14
LEA	0	0	0	0
Both	0	1	0	9
Hearing Officer	1 ²⁴	0	0	1
Child	0	0	0	0

- Extensions in the current reporting period were necessary to ensure fairness in the hearing process. Hearing officers continue to be reminded that Virginia's regulations governing special education contemplate the granting of extensions only in only the most critical instances.
- Consistent with the previous two reporting periods, data for 2008-09 indicates that requests for extensions are most frequently made by parents. This pattern may be attributable to parents sometimes feeling overwhelmed by the multiple layers of requirements and/or concluding that they should not represent themselves. However, the number of requests for extensions, whether by parents or by both parents and LEAs, has dropped dramatically since 2005-06.

²¹Two (2) extensions of the 45-day timeline were granted at the parties' request (*see* footnote 17). These extensions were carefully documented in the record. Each extension was granted for a limited period of time based on the reasons presented by the party requesting the extension. Each of the two extensions resulted in 25-day delays.

²²Two (2) extensions of the 45-day timeline were granted (*see* footnote 18). These extensions were carefully documented in the record. Each extension was granted for a limited period of time based on reasons presented by the party requesting the extension. One extension resulted in a 20-day delay and the other only 10 days.

²³One extension of the 45-day timeline was granted but the case was completed within the 45-day timeline. This extension was carefully documented by the hearing officer.

²⁴In this case, the hearing officer became ill when he was preparing the decision in the case. He recovered sufficiently on the following day and issued the decision with a one-day delay.

F. IMPLEMENTATION PLANS

Following the completion of each due process hearing, whether or not it goes to full hearing or is settled or dismissed, the school division is required to file with ODR/AS an Implementation Plan that reports how the school division will implement the hearing officer's decision.²⁵ The LEA has 45 calendar days to submit the implementation plan following the hearing officer's decision. The coordinator of due process services reviews and approves all implementation plans.

Implementation Plans

	Reporting Periods		
	2008 – 2009	2007 – 2008	2006 – 2007
Number of plans required	81	87	69
Received	68	73	52
Approved	68	73	52
Pending review	0	0	0
Pending receipt/review	13	14 [0*]	17 [0*]
Total pending closure	13	14 [0*]	17 [0*]

*As of 6/30/09

Trends

- Continuing the trend of prior reporting periods, all implementation plans submitted to ODR/AS were approved. For this reporting period, approximately 84% of the total number of plans required (68/81) were received/approved, equaling the percentage reported in 2007-08 (73/87). These two reporting periods reflect an increase over the 75% of the number of plans received and approved (52/69) in 2006-07.

G. FOLLOW-UP SYSTEM FOR IMPLEMENTATION PLANS

VDOE identified as a target area in its Continuous Improvement Monitoring Process (CIMP) follow-up with school divisions to ensure implementation of the plans submitted by LEAs to comport with the hearing officers' decisions and approved by VDOE. This meant developing a system to review all implementation plans, to require documentation, and/or to initiate an on-site review. In VDOE's CIMP reports to OSEP in June and November 2003, and 2004 Annual Performance Report, ODR/AS documented

²⁵ This provision is changed in the newly revised state special education regulations. Implementation Plans are required now for only fully adjudicated cases. 8 VAC 20-81-210 N.16.

its system for meeting this responsibility, which was implemented on July 1, 2003. ODR/AS began with the 2002-03 Implementation Plans. ODR/AS continues to report its efforts in its State Performance Plan at Indicator 15.

Follow-Up System

	Reporting Periods		
	2008 – 2009	2007 – 2008	2006 – 2007
Number of due process cases	81	87	69
Number of plans requested and received	68	73	52
Number of plans pending receipt	13	14	17
Follow-up Implementation Plans reviewed	68	73	52
✓ not requiring additional action	28	36	24
✓ requiring follow-up activity	40	37	28
IPs pending review	0	0	0

Trends

- Again this year, no reviews of implementation plans were pending. About 41% of all implementation plans (28/68) required no additional action after follow-up review (compared to 49% (73/87) in 2007-08), while approximately 59% (40/68) required further action (compared to about half (37/73) in 2007-08).

H. INITIATIVES

- ODR/AS completed its guidance document for hearing officers on the subject of the 45-day timeline (*see D - Hearing Officer: Training, above*). This project was identified in VDOE's 2003 CIMP Report to OSEP; in VDOE's 2002 report to Virginia's Code Commission; in VDOE's 2004 Annual Performance Report, and the current State Performance Plan (Indicator 17).

- The office's Work Plan included the following components:
 - ✓ reviewing information from other SEAs regarding policies, procedures, and practices;²⁶

²⁶The Mid-South Regional Resource Center was instrumental in obtaining this information from other SEAs for VDOE.

- ✓ reviewing three years of data to determine what patterns may exist relative to such areas as reasons for the extensions and hearing officers granting the extensions;
 - ✓ reviewing applicable case law on this subject; and developing the guidance document.
- In VDOE's 2004 Annual Performance Report to OSEP, VDOE reported a project target and activity that focused on the development of a guidance document, which was completed and issued to the field as the *Parents' Guide to Special Education Dispute Resolution* in August 2008. This project was finalized during this reporting period. VDOE also developed this project in response to the concerns raised during the public hearing held by the Virginia Code Commission's Administrative Law Advisory Committee. The concerns related to the parents' need for understanding the legal intricacies of the process when representing themselves in due process hearings. Without this understanding, parents reported that they remained at a disadvantage when the school board attorney represents the LEA's interests, thus eliminating a level playing field. The document provides information and guidance on conflict resolution, such as mediation and the complaints system.
- In response to the above-referenced public hearing, ODR/AS developed and posted on its web site, a list of legal and advocacy services for parents and students with disabilities, with a brief summary description of each of the services at <http://www.doe.virginia.gov/VDOE/dueproc>. This document was updated during 2008-09.
- ODR/AS received a work group report during 2007-08 addressing alternative methods of conducting resolution sessions. Based on this report, ODR/AS developed a guidance document on this topic for school division personnel. It is anticipated that this document will be released in early 2010.
- Based on the IDEA 2004 mandate for Resolution Sessions, ODR/AS has included a tracking system for resolution sessions held and disputes resolved through resolution agreements.
- ODR/AS will continue to provide the hearing officers with guidance documents and training materials on the 2009 state regulations.

PART II MEDIATION SERVICES

- Baseline Data
- Evaluations
 - ✓ System
 - ✓ Consumer
 - ✓ Mediators
- Training
- ODR/AS Initiatives

Mediation services are available to parents and school administrators to help them negotiate issues on which they disagree regarding the identification, testing or provision of special education services to school-age students. The sooner mediation is sought, the more likely it is to be successful. In 2008-09, it helped people to a successful outcome in 83.9% of the times when it was sought. Changing the format and the dynamics of a meeting is likely to change its outcome. Mediation is a good option to bear in mind when the settlement period is invoked by a request for hearing. There is material descriptive of the mediation process on our web site at <http://www.doe.virginia.gov/VDOE/duproc>.

A. BASELINE DATA

VDOE's Special Education Mediation Services includes: 8 mediators; ODR/AS director, Coordinator of Mediation Services, and an administrative assistant. The current system for maintaining the baseline data was developed and implemented during the 2003-2004 reporting period.

Disposition of Requests

	Reporting Periods				
	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
Number of requests	105	138	129	125	133
• resolved	74	87	81	74	79
• partially resolved	0	2	2	1	5
• unresolved	14	22	18	25	27
• withdrawn	16	18	17	14	21
• pending	1	9	11	11	1

Requests Involving Due Process

	Reporting Periods				
	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
Number of requests	105	138	129	125	133
Number involved in DP	24	32	21	24	29
✓ resolved	15	18	6	13	17
✓ partially resolved	0	0	1	1	0
✓ unresolved	5	6	6	7	7
✓ withdrawn	4	8	7	3	5
✓ pending	0	0	1	0	0

 Five-Year Review of Mediation Requests

	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
Mediations requested	105	138	129	125	133

 Issues

	2008-2009	2007- 2008	2006-2007	2005-2006	2004-2005
Total number of issues	208	235	202	206	195
IEP	144	163	135	140	131
✓ sufficiency of services	58	65	48	50	59
✓ type of services	35	39	37	44	38
✓ placement	44	52	43	37	30
✓ goals	7	7	7	9	4
Staffing	17	8	17	23	31
Evaluation & Disability	15	19	24	24	17
Financial responsibility*	18	22	17	8	11
Discipline	8	8	7	9	3
Transportation	5	6	2	2	1

	2008-2009	2007- 2008	2006-2007	2005-2006	2004-2005
ESY	1	9	Not collected	Not collected	Not collected

* Involves disputes over financial responsibility for costs associated with a program that the parent has selected.

Requests by Region:

Regions	2008-09	2007-08	2006 - 2007	2005 - 2006	2004 - 2005
Region I	14	14	9	26	20
Region II	20	40	12	23	16
Region III	5	9	15	13	17
Region IV	42	51	62	44	53
Region V	12	17	17	10	14
Region VI	8	4	8	3	7
Region VII	3	2	1	3	5
Region VIII	1	1	5	3	1

Trends

- The total number of requests for mediation (105) is about three-fourths (76%) of the total for the previous reporting period (138). Eighty-four percent (84%) of requests in which parties actually met for mediation (74/88) were partially or completely resolved, compared to the previous reporting period, in which eighty percent (80%) of requests in which parties actually met for mediation (89/111) were partially or completely resolved.
- Several superintendents' regions witnessed significant changes in the number of requests for mediation during this reporting period.
 - Region II (Tidewater and Eastern Shore), which had more than tripled its mediation requests in 2007-08 (40 in 2007-08; 12 in 2006-07), recorded 20 mediation requests—representing a 50% decrease from the previous year.
 - Requests in Region III (Northern Neck) fell 45 percent, from 9 in 2007-08 to 5 in 2008-09, having experienced a 40% decline in the previous reporting period (from 15 in 2006-07 to 9 in 2007-08).

- Region VI (Cities of Danville, Martinsville, Roanoke, and Salem, and surrounding counties), which had experienced a 50% decline in mediation requests in the previous reporting period (4 in 2007-08; 8 in 2006-07) rebounded with 8 mediation requests in 2008-09, matching its 2006-07 numbers.
- Region V, which experienced no change in the number of mediation requests for two years (17 in 2006-07 and 2007-08), reported 12 requests in 2008-09, reflecting a decrease of about one-third.
- While Region VII experienced a 50% increase in mediation requests since the previous reporting period, its total of 3 requests (compared to 2 requests in 2007-08) was the second lowest among all the regions.
- While Region IV (Northern Virginia) claimed the highest number of total mediation requests for the fifth consecutive year, this total reflected an 18% decline (42 in this reporting period; 51 in 2007-08). Interestingly, Region IV witnessed the same percentage decrease (18%) in the previous reporting period (51 in 2007-08, down from 62 in 2006-07).
- Mediation requests remained unchanged in two superintendent's regions.
 - Region I, (Central Virginia), which had witnessed an approximately 50% increase in mediation requests in the previous reporting period (14 in 2007-08; 9 in 2006-07) experienced no change in the number of requests, 14, in 2008-09.
 - With the fewest number of mediation requests among all superintendents' regions for a second year, Region VIII (South-Central Virginia) again reported only 1 mediation request.
- While increased awareness of the mediation option may augment the numbers of requests in some regions, no specific factors can be cited as contributing to the variations in the total numbers of mediation requests in the respective superintendents' regions.
- The total number of mediation requests made during due process (24) fell in this reporting period (down from 32 in 2007-08), and comprised about 23% of all mediation requests (24/105) for this reporting period. This 23% matched the percentage recorded for the previous reporting period (32/138).
 - Of the mediations held when due process was requested, 75% (15/20) were successfully resolved, matching the previous year's resolution rate (18/24).
- The total number of issues for this reporting period, 208, is about 12% lower than the 235 reported in 2007-08 and only about 3% higher than the 202 reported in 2006-07.

- For the fifth consecutive year, the IEP issue category claimed the highest portion of mediation issues, accounting for about 69% (144/208) of the total number of issues. Interestingly, this percentage matches that reported for 2007-08 (163/235), and remains fairly consistent with those reporting in previous years: 66% in 2006-07; approximately 68% (140 of 206) in 2005-06, and about 67% (131 of 195) in 2004-05.
 - The financial responsibility category, which includes disputes over tuition reimbursement for private placements and costs associated with other programs, again followed as a distant second, accounting for about 8% (18/208) of total issues in this reporting period. This percentage is consistent with the 9% (22/235) of total issues reported in 2007-08.
 - The staffing category moved to third place, with 8% of total mediation issues (17/208).
 - The evaluation and disability category slipped to fourth place, accounting for 7% of total issues (15/208 in 2008-09).
 - For the second time, data was collected for requests involving extended school year (ESY). The issue accounted for only one request in 208 (.05%) in 2008-09, compared to 9 (out of 235 total issues in 2007-08, or 3%).
- The probability of reaching an agreement through mediation when a hearing is requested is 75% (15/20), far surpassing the 30% agreement rate in unassisted resolution sessions.
 - There continues to be a large representation in the number of cases in which autism is a pivotal consideration. There has been a corresponding decrease in the age at which student's services have come before a mediator for assistance in negotiation.
 - Some mediators report that schools understand and make better use of mediation and are better prepared to cooperatively participate in negotiations.
 - Mediators report that attorneys are more frequently attending mediations or acting in an advisory capacity to parties involved in mediation.

B. EVALUATIONS

☐ Consumer Evaluations

People who participate in mediation are supplied with a form to complete to provide the Coordinator with a written evaluation with any comments they wish to make to capture their experience in the mediation session. This reporting period, 210 consumer evaluations were distributed. The Coordinator reviews them for issues requiring clarification and calls

for more information if necessary. People are encouraged at any time to call or write the Coordinator with their experiences or to approach him at a meeting.

Some sample comments from participants:

Parent: "All in all, the mediation was a positive experience."

Administrator: "The mediator did a good job facilitating the discussion. He was fair, non-judgmental. His calm approach was ideal for the meeting."

Parent: "I was very satisfied with the mediator."

Administrator: "This was our first mediation with this mediator. She was effective in assisting with the resolution of parent concerns."

Parent: "A good process with a good mutual outcome. The mediator was excellent. (The process was) a lot less nerve-wracking than I thought."

Administrator: "The mediator did a very good job helping to focus the parent and school staff on issues upon which agreement was possible. Her redirection helped move the process toward resolution versus a review of past disagreements."

Evaluation of Mediators

Evaluations extend beyond these informal reports to observations of mediators at work and formal assessments in writing, which are discussed in supervision. The objective in a progressive assessment process is to assist the mediators in developing their understanding and skills in the service of assisting people in negotiating important issues.

C. TRAINING FOR MEDIATORS

Mediators received 12 hours of training sponsored by ODR/AS this year. Mediators supplemented this through other sources including state and national conferences and specialized reading. ODR/AS provides the mediators with summaries and texts of Virginia and Fourth Circuit Court and U.S. Supreme Court decisions relative to special education cases for 2008-09.

D. TRAINING PROVIDED TO CONSTITUENTS

The Coordinator conducted workshops on mediating special education issues for the Virginia Mediation Network, Leadership Academy interns, VCU School of Education graduate students, South Carolina Research to Practice Conference. He presented a workshop on negotiations for new special education teachers and supervisors at the Virginia Transition Forum.

E. WELCOME

Karen Asaro is a mediator with 29 years of experience handling child dependency, employment, ADA and court-referred cases. She is coordinator of the City of Virginia Beach Mediation Program and is an adjunct professor at Christopher Newport University where she teaches mediation courses. We are fortunate to have her join our roster.

F. INITIATIVES

- A work group met several times to develop recommendations for the best use of resolution sessions. This project was completed. Final review of the completed work products is pending.
- The Coordinator wrote an article on mediating special education issues for the Advocacy Institute.
- The Virginia SEMS guidelines for mediation were rewritten and published in March 2009. These guidelines are available on the ODR/AS Web site at <http://www.doe.virginia.gov/VDOE/dueproc>.

PART III COMPLAINTS SYSTEM

- Baseline Data
- Implementation System for CAPS
- ODR/AS Initiatives

A. BASELINE DATA

Number of Complaints

	Reporting Periods		
	2008-2009	2007 – 2008	2006 – 2007
Number of Complaints	121	138	115
• resolved through mediation or otherwise settlement agreement	28	15	14 ²⁷
• withdrawn	9	18	15 ²⁸
• dismissed	0	2 ²⁹	2
• findings/decisions issued	64	103	84 ³⁰
• pending as of 6/30/09	20	0	0
Number exceeding the 60- day timeline without the mandated extension	0	0	0

Five-Year Review of Complaints Received

Fiscal Year	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
Total Number of Complaints	121	138	115	132	167

²⁷One (1) case was resolved during the 2007-08 reporting period.

²⁸Three (3) cases were withdrawn during the 2007-08 reporting period.

²⁹One case was dismissed during the 2008-09 school year.

³⁰17 decisions were rendered during the 2007-08 reporting period.

Findings/Decisions

	Reporting Periods		
	2008 – 2009	2007 – 2008	2006 – 2007
Number of decisions issued	64*	84**	67***
Number of issues	192	265	217
Number of issues in compliance	116	168	164
Number of issues in noncompliance	76	97	53

*As of 6/30/09

**As of 6/30/08

***As of 6/30/07

 Decisions Appealed

	Reporting Periods		
	2008 – 2009	2007 – 2008	2006 – 2007
Number of decisions issued	64	84	67
# of Decisions Appealed	13*	18**	24***
• Findings Affirmed	8	14	18
• Findings Reversed	0	1	0
• Findings Remanded	2	3	3
• Findings Split	2	0	1
• affirmed issues	2	0	9
• reversed issues	1	0	1
• remanded issues	1	0	0
• dismissed issues	0	0	0
• Appeals Withdrawn	0	0	2
• Appeal Decisions Pending as of 6/30/09	1	0	0

* 5 appeals were based on findings issued in 2007-08

**7 appeals were based on findings issued in 2006-07

***8 appeals were based on findings issued in 2005-06

□ **Issues/Sub-issues**

Issues/Sub-issues	Reporting Period 2008 – 2009		
	#Issues	C*	NC*
IEP	87	49	38
Implementation	59	33	26
Development, Review & Revision	24	15	9
Provision of Progress Reports	4	1	3
IEP Meetings	22	14	8
Team Composition	8	3	5
Parental Participation	5	5	0
Parent Request for Meeting	2	1	1
Copy of IEP to Necessary Staff	1	1	0
Copy of IEP to Parent	1	1	0
Meeting Procedures	3	2	1
Notice	2	1	1
FAPE	7	6	1
Disability Harassment	4	3	1
ESY	1	1	0
Participation in Extra Curricular Activities	2	2	0
Procedural Safeguards	12	8	4
IEE	4	3	1
Written Prior Notice	7	4	3
Notice of Procedural Safeguards	1	1	0
LRE	2	2	0
Least Restrictive Environment	2	2	0
Discipline	21	12	9
Disciplinary Procedures	1	1	0
MDR	11	8	3
FBA/BIP	4	3	1
Services During Removal	5	0	5
Eligibility/Evaluation/ Reevaluation	27	16	11
Eligibility Procedures	11	8	3
Evaluation/Reevaluation Procedures	10	3	7
Team Composition	1	1	0
Timelines	4	3	1
IEP Developed within 30 days of eligibility	1	1	0
Child Find	4	3	1
Child Study Procedures	4	3	1

Issues/Sub-issues	Reporting Period 2008 – 2009		
	#Issues	C*	NC*
Placement	6	4	2
Change in Placement	5	4	1
Continuum of Alternative Placements	1	0	1
Records	1	0	1
Access	1	0	1
Other	3	2	1
Transfer Student Procedures	1	0	1
Due Process Procedures	2	2	0
TOTALS	192	116	76

*denotes that the LEA was found to be in compliance “C” or noncompliance “NC”

Issues Summary: Three-Year Period

Issue Category	Reporting Period 2008-2009			Reporting Period 2007-2008			Reporting Period 2006-2007		
	Total Issues	C	NC	Total Issues	C	NC	Total Issues	C	NC
IEP	87	49	38	126	80	46	90	66	24
IEP Meetings	22	14	8	35	19	16	25	21	4
FAPE	7	6	1	6	5	1	8	7	1
Procedural Safeguards	12	8	4	21	13	8	20	15	5
LRE	2	2	0	3	3	0	4	4	0
Discipline	21	12	9	18	7	11	10	9	1
Eligibility/Evaluation/ Reevaluation	27	16	11	21	16	5	25	18	7
Child Find	4	3	1	3	3	0	5	4	1
Program Standards	0	0	0	4	4	0	4	1	3
Placement	6	4	2	3	3	0	2	2	3
Records	1	0	1	13	8	5	17	14	4
Other	3	2	1	12	7	5	7	3	4
TOTALS	192	116	76	265	168	97	217	164	53

□ Trends

- The number of complaints for this reporting period (121) is less than the previous year (138), and is higher (16) than the average of the total number of cases over the last 5 years (523 total cases, averaging approximately 105 cases per year). In the previous reporting period, the average total number of cases stood at 144 per year, with 721 cases in that five-year span).
 - Although the number of mediation requests was lower this year (105 in 2008-009, compared to 138 in 2007-08 and 129 in 2006-07), we cannot conclude how mediation may have affected the number of complaints. There are no clearly identifiable factors accounting for this decrease.
- The number of complaint issues (192) is about 73% of the number (265) for 2007-08 (and 73 less), and 25 less than the 217 reported for 2006-07. The decrease in the total number complaints in 2008-09 may have contributed to a corresponding decrease in the number of complaint issues; however, it is nonetheless significant that the regulations require the SEA to address each issue with findings.
- The number of decisions issued, 64, also decreased in the current reporting period, standing at about 76% of the number of decisions issued in 2007-08 (84). However, the number of decisions issued in 2008-09 was only three (3) less than the number issued in 2006-07, perhaps suggesting that the 84 decisions issued in the intervening reporting period represented a slight aberration.
- For the third consecutive year, the total number of decisions that were appealed (13) decreased (18 in 2007-08; 24 in 2006-07; and 32 in 2005-06). Similarly, the percentage of appeals dropped to 20% (13/64) in the current reporting period, from 21% (18/84) in 2007-08, 35% (24 of 67) in 2006-07, and 42% (32/75) in 2005-06.³¹
- Approximately 38% (5/13) of the decisions appealed in 2008-09 were based on findings issued in 2007-08, while 40% (7/18) of the decisions appealed in the prior reporting period were based on findings issued in 2006-07.
- For the fifth consecutive year, the IEP issue category claimed the highest portion of complaint issues, comprising approximately 45%, or nearly half, (87/192) of the total number of issues. This percentage reflects a slight decrease from approximately 48% (126/265) in 2007-08, and an increase over

³¹See Annual Report for Special Education, Office of Dispute Resolution and Administrative Services 2007-2008.

the 41% (90/217) and 38% (71/187) reported in 2006-07 and 2005-06, respectively.³²

- The Eligibility/Evaluation/Reevaluation category followed, accounting for about 14% (27/192) of total complaint issues, with IEP meetings at about 12% (22/192), and the Discipline issue category supplying about 11% (21/192) of complaint issues.
- Sub-issue areas with highest numbers of noncompliance findings follows:
 - ✓ IEP implementation (26 of 76 total noncompliance findings)
 - ✓ IEP development, review & revision (9 of 76)
 - ✓ Evaluations/Reevaluation Procedures (7 of 76)
 - ✓ Services During Removal and IEP Team Composition (each at 5 of 76)
- Issue categories that demonstrated improvement in compliance (as a percentage of complaints submitted in the particular category) since the last reporting period follow:
 - ✓ IEP meetings (64%; 54% in 2007-08)
 - ✓ FAPE (86%; 83% in 2007-08)
 - ✓ Procedural Safeguards (66%; 62% in 2007-08)
 - ✓ Discipline (57%; 39% in 2007-08)
 - ✓ Other (58%; 43% in 2006-07)
- In contrast, issue categories that declined in compliance since the last reporting period follow:
 - ✓ IEP (56%; 64% in 2007-08)
 - ✓ Eligibility/Evaluation/Reevaluation (59%; 76% in 2007-08)
 - ✓ Child Find (75%; 100% in 2007-08)
 - ✓ Records (0%; 62% in 2007-08)
- Three issue categories--Least Restrictive Environment, ESY, and Participation in Extracurricular Activities--maintained their 100% compliance rates from the previous reporting period.
- Data reflects no clear nexus between revised regulatory requirements and any significant increase or decrease in various complaint totals or findings.

B. IMPLEMENTATION SYSTEM FOR CORRECTIVE ACTION PLANS

VDOE identified as one of its target areas in its Continuous Improvement Monitoring Process and Annual Performance Report to follow up with school divisions to ensure timely

³²*Id.*

correction of noncompliances as required by complaint decisions. This meant developing a system to review all Corrective Action Plans (CAPs) that had been approved by ODR/AS, and as necessary, require documentation and/or initiate an on-site review to ensure complete implementation. In VDOE's CIMP reports to OSEP in June and November 2003, and 2004 Annual Performance Report, ODR/AS evidenced its system for meeting this responsibility, which was developed and implemented on July 1, 2003. ODR/AS began with the 2001-02 school year CAPs. This element is now included in the State Performance Plan (Indicator 15).

Corrective Action Plan Implementation

Fiscal Year	Number of Decisions Issued	Pending Decision	CAPs Issued	Reviewed for Full Implementation and Closed ³³	Pending Review
2008-09	64	20	38*	0	38
2007-08	103	0	46	53	0
2006-07	84	0	46	52	0
2005-06	94	0	38	47	0
2004-05	119	0	55	56	0

* As of 6/30/09

C. INITIATIVES

- ODR/AS' complaints specialists participated in a variety of trainings on special education law and regulatory matters. Each specialist is assigned to two regions and serves on VDOE's technical assistance team for those particular regions. The specialist also attends regional meetings of the special education directors in the assigned region.
- ODR/AS staff, particularly the complaints staff, work closely with the VDOE parent ombudsman (from the Office of Student Services) to provide information and guidance to the Parent Resource Centers and parents on dispute resolution matters. The ombudsman position began in 2003-04 in response to the Code Commission's 2001 recommendation to VDOE to create such a position to assist parents with special education matters and understanding of dispute resolution options.
- ODR/AS' complaints specialists also provided training sessions for school divisions, special educators, parents and other interested groups to address a variety of special education issues, including transition services, discipline, transportation, and dispute resolution.

³³This includes the review of ODRAS accepted self-corrective actions which were submitted by the LEA with their response to the complaint.

- ODR/AS' complaints specialists assisted in the development of a revised *Parents' Guide to Special Education Dispute Resolution* document that was released in August of 2008.

PART IV ADMINISTRATIVE SERVICES

- O Annual Plans
- O Inquiries
- O Freedom of Information Act Requests
- O Initiatives

The Office of Dispute Resolution and Administrative Services is responsible for:

- coordinating the revision of Virginia’s special education regulations, including ensuring compliance with all requirements of Virginia’s “Administrative Process Act.” (*Code of Virginia* § 2.2-4000 *et seq.*) Administrative Services staff is responsible for this function.
- training initiatives relative to IDEA ’04 and its federal implementing regulations, and VDOE’s revision of the Virginia regulations governing special education. Administrative Services staff is responsible for coordinating this function.
- coordinating the Annual Plan process for the local school divisions and state-operated programs. The coordinator of administrative services oversees the annual plan system, and provides technical assistance and trainings regarding its components.
- coordinating the process for developing and posting responses to the Frequently Asked Questions (FAQs), reflecting questions generated by the field. The coordinator of administrative services oversees this operation.
- responding to written and electronic inquiries involving the application of federal and state regulations governing special education. The ODR/AS staff is responsible for responding to inquiries.
- responding to Freedom of Information Act (FOIA) requests relative to the dispute resolution systems. The coordinator of due process services coordinates the responses to FOIA requests.

Annual Plans

Pursuant to the *Code of Virginia*, § 22.1-215, each of the 148 Virginia school divisions and state-operated programs must submit to VDOE for approval a plan to provide special education services to identified children with disabilities within its jurisdiction. This plan must not be submitted more than annually unless changes to the plan are required by federal or state law or regulation. This plan must be received by VDOE, in substantially approvable form, no later than July 1 of each year.

During the 2008-09 school year, ODR/AS provided training and technical assistance, as necessary, to assist school divisions and state-operated programs in the development and submission of their annual plan, including the submission of their electronic application for federal funding via the Online Management of Education Grant Awards (OMEGA) system. All annual plans were received, reviewed, and approved by July 1, 2009.

In addition, as a result of the closing of the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton, ODR/AS provided extensive, ongoing technical assistance to the Virginia School for the Deaf and the Blind at Staunton to assist in the transition process. These efforts included assisting in the review and revision of local policies and procedures impacted by the consolidation of the two State schools to ensure compliance with applicable federal and state special education mandates.

□ The IDEA 2004 and the Regulatory Process

ODR/AS is responsible for coordinating the revision of the “Regulations Governing Special Education for Children with Disabilities in Virginia,” Virginia’s special education regulations. A framework for this process was developed during the 2005-2006 school year, and multiple training opportunities regarding this process have been provided to parents, advocates, LEA personnel, and other consumers. In accordance with the regulations revision framework, between July 1, 2008 and June 30, 2009, ODR/AS engaged in a number of activities, including the following:

- With guidance from the Board of Education, and the Office of the Attorney General, worked collaboratively with staff throughout VDOE to revise proposed regulatory language in response to received public comments. The final special education regulations were reviewed and approved by the Virginia Board of Education during its September 25, 2008 meeting. The Board of Education readopted the final regulations at its May 28, 2009 meeting, following an additional public comment period.
- Developed and disseminated copies of the “Town Hall” forms, which detailed the proposed changes to Virginia’s special education regulations, and outlined the rationale for each proposed change.
- Ensured review of the final regulations by the Executive Branch, including the Department of Planning and Budget, the Secretary of Education, and the Office of the Governor. Throughout this review process, ODR/AS staff met with representatives from the Office of the Governor, and responded to requests for additional information and clarification regarding the proposed changes and the ultimate impact for parents, school divisions, and the Commonwealth.
- Following the completion of the Executive Branch approval process, worked with the staff of the “Virginia Register of Regulations” to ensure publication of the final regulations on April 13, 2009.

- Simultaneously, issued a “Notice of Suspension,” initiating a 30-day public comment period, which concluded on May 13, 2009. The public comment period was convened in response to a request from more than 25 citizens, who alleged that changes with substantial impact occurred between the publication of the proposed regulations and the publication of the final regulations.
- Served as staff liaisons to the State Special Education Advisory Committee (SSEAC), and its Policy and Regulations subcommittee, assisting during a meeting at which the final regulations were reviewed and the SSEAC drafted and finalized its public comments.
- Received, reviewed, and processed 1,801 individual comments regarding the final regulations from 127 individuals and organizations during the additional public comment period which was held between April 13 to May 13, 2009.
- Developed and disseminated two summaries of public comment. The first summarized approximately 38,743 comments received between the close of the NOIRA public comment period on February 23, 2008, and June 30, 2008, and included those comments made during nine public hearings convened in May and June 2008. The second summarized those comments regarding the final regulations which were received between April 13 and May 13, 2009. A copy of the summary was provided to each individual and group for whom contact information was available, who submitted comments during the respective public comment period.
- Following the Board of Education’s readoption of the final regulations on May 28, 2009, worked with the staff of the “Virginia Register of Regulations” to republish the final regulations on June 22, 2009, ending the suspension period, and initiating the 15-day final adoption period. Virginia’s new special education regulations became effective on July 7, 2009.
- Updated, as appropriate, the dedicated website for the regulations revisions process at <http://www.doe.virginia.gov/VDOE/duproc/regulationsCWD.html> with revised versions of the draft regulations, the summaries of public comments, and technical assistance documents to ensure that all constituency groups understood the requirements of the Administrative Process Act, and the current status of the regulations revision process.

☐ Training Activities

During this reporting period, ODR/AS conducted approximately 33 trainings for multiple constituency groups, across the state, regarding regulatory matters, including the regulations revision process.

ODR/AS also developed and disseminated technical assistance materials to provide assistance to constituency groups relative to the implementation of revised federal and state

mandates for special education. For example, in response to revisions to IDEA’s federal implementing regulations, dated December 2008, which in part addressed a parent’s right to revoke consent for a child to receive special education and related services, ODR/AS issued a guidance document and a model prior written notice that specifically addresses revocation of parental consent. In addition, ODR/AS provided technical assistance information regarding revisions made to the *Code of Virginia* during the 2009 General Assembly that impact the definition of the term “parent” and which establish the time frame to appeal a due process decision in state court as 180 days.

Further, ODR/AS staff actively monitored the national debate regarding the use of restraint and seclusion. These efforts included reviewing national reports, monitoring the Congressional hearing that was convened, and contacting federal personnel working on the issue. In addition, ODR/AS conducted a survey of all Virginia school divisions to determine the type of training provided to staff regarding the use of restraint and seclusion, and whether or not the school division currently has written policies or guidelines regarding the use of restraint and seclusion. A report and a subsequent addendum which summarized the information obtained were provided to Directors of Special Education and to the State Special Education Advisory Committee (SSEAC).

Frequently Asked Questions

The revision of Virginia’s special education regulations to comply with IDEA, and its federal implementing regulations, resulted in a reprioritizing of this activity. ODR/AS’ goal is to initiate a process of identifying and responding to FAQ’s, and to ensure timely posting of FAQs on its Web site now that the state regulations revision process is complete.

Inquiries

Fiscal Year	2008-09	2007-2008	2006-2007	2005-2006	2004-2005
Number of Requests	264	251	174	236	158

Inquiries are requests for interpretation or application of regulations that are not related to a specific complaint, mediation, or due process case. As the data indicates, there has been an increase in these requests. This is attributable, in part, to questions about the application of the new federal special education regulations to special education in Virginia, and the extreme interest in issues relative to the regulations revision process.

Freedom of Information Act Requests

Fiscal Year	2008-09	2007-2008	2006-2007	2005-2006	2004-2005
Number of Requests	14	20	14	29	28

□ Initiatives

Administrative Services will be responsible for the following activities during the 2009-10 year:

- Developing and/or revising technical assistance documents to ensure compliance with Virginia's new special education regulations, including a guidance document on the implementation of the new regulations, the procedural safeguards notice, and "A Parent's Guide to Special Education."
- Providing, upon request, training statewide to a variety of constituency groups to review and clarify Virginia's new special education requirements.
- Disseminating the new state special education regulations to all constituency groups, including through posting the information to ODR/AS' web site, distribution at trainings, and direct mail of the information, upon request. ODR/AS will also ensure that the new regulations and the technical assistance documents are translated, as appropriate.
- With guidance from the Board of Education, and the Office of the Attorney General, initiating an expedited regulatory process pursuant to Virginia's Administrative Process Act (Va. Code § 2.2-4006), to incorporate the revisions to IDEA's federal implementing regulations, dated December 2008, and revisions made to the *Code of Virginia* during the 2009 General Assembly. It is anticipated that this process will be completed and Virginia's special education regulations will be reissued with the additional provisions inserted in early 2010.
- Initiating the process of identifying and responding to FAQ's, and ensuring their timely posting to VDOE's Web site, upon completion.
- Coordinating the Annual Plan process to ensure compliance with the IDEA, its federal implementing regulations, and Virginia's special education regulations, including via the distribution of a template for local educational agencies to use to ensure that local policies and procedures regarding special education comply with state and federal mandates. It is anticipated that this document will be distributed in the fall of 2009.

APPENDIX A - Dispute Resolution Activities by LEA 2008-09

c: VDOE's management team responsible for the State Performance Plan
 VDOE staff in the Division of Special Education and Student Services
 VDOE hearing officers and mediators
 Virginia Supreme Court, Office of the Executive Secretary
 State Special Education Advisory Committee
 Directors of Special Education
 PEATC

Appendix A
Dispute Resolution Activities by LEA
2008-09

SCHOOL DIVISION	SPED PUPILS AGES 0-22+	TOTAL PUPILS	Due Process Hearings Filed	SPED Complaints Filed	Mediation Cases
Accomack	711	5,193	0	1	0
Albemarle	1,641	12,818	0	0	0
Alexandria City	1,830	11,223	1	0	3
Alleghany	252	2,896	0	0	0
Amelia	228	1,849	0	0	0
Amherst	555	4,772	1	0	2
Appomattox	297	2,247	0	0	0
Arlington	2,933	19,599	3	1	2
Augusta	1,357	10,999	1	0	1
Bath	103	733	0	0	0
Bedford	1,101	10,926	2	0	1
Bland	130	930	0	0	0
Botetourt	823	4,949	0	0	0
Bristol City	371	2,415	0	0	0
Brunswick	268	2,167	0	1	1
Buchanan	671	3,399	0	0	0
Buckingham	258	2,069	0	0	0
Buena Vista City	145	1,151	0	0	0
Campbell	957	8,734	0	1	1
Caroline	640	4,244	0	1	0
Carroll	586	4,076	0	0	0
Charles City County	131	859	0	0	0
Charlotte	330	2,182	1	0	0
Charlottesville City	660	4,056	0	0	0
Chesapeake City	7,056	39,901	2	11	5
Chesterfield	7,708	59,080	1	6	2
Clarke	171	2,169	0	0	0
Colonial Beach	89	576	0	0	0
Colonial Heights City	427	2,902	0	0	0
Covington City	180	918	0	0	0
Craig	104	702	0	0	1

SCHOOL DIVISION	SPED PUPILS AGES 0-22+	TOTAL PUPILS	Due Process Hearings Filed	SPED Complaints Filed	Mediation Cases
Culpeper	755	7,394	0	0	0
Cumberland	198	1,550	0	0	0
Danville City	1,000	6,556	0	0	0
Dickenson	430	2,533	0	0	0
Dinwiddie	649	4,675	0	1	0
Essex	217	1,634	0	0	0
Fairfax	23,962	169,040	20	22	11
Falls Church City	258	1,967	0	2	1
Fauquier	1,238	11,265	1	1	3
Floyd	336	2,063	0	0	0
Fluvanna	467	3,705	1	0	0
Franklin	1,332	7,429	0	1	0
Franklin City	203	1,299	0	0	0
Frederick	1,554	13,041	0	1	3
Fredericksburg City	305	2,842	0	2	0
Galax City	143	1,361	0	0	0
Giles	371	2,581	0	0	0
Gloucester	751	6,033	0	0	2
Goochland	349	2,422	0	0	0
Grayson	94	2,058	0	0	0
Greene	447	2,855	0	0	0
Greensville	339	2,726	1	0	0
Halifax	1,108	6,023	0	0	1
Hampton City	3,056	21,810	2	1	0
Hanover	2,655	18,970	1	1	1
Harrisonburg City	519	4,523	1	1	0
Henrico	6,773	48,991	1	6	7
Henry	1,173	7,563	1	0	0
Highland	49	273	0	0	0
Hopewell City	641	4,190	1	0	0
Isle of Wight	718	5,495	1	1	2
King & Queen	126	802	1	0	0
King George	455	4,064	0	1	0
King William	310	2,212	0	0	1

SCHOOL DIVISION	SPED PUPILS AGES 0-22+	TOTAL PUPILS	Due Process Hearings Filed	SPED Complaints Filed	Mediation Cases
Lancaster	166	1,380	0	0	0
Lee	769	3,694	0	1	0
Lexington City	59	491	0	0	0
Loudoun	5,910	56,922	3	3	17
Louisa	781	4,736	0	4	1
Lunenburg	253	1,686	0	0	0
Lynchburg City	1,304	8,655	0	0	1
Madison	186	1,870	0	0	0
Manassas City	927	6,566	0	2	0
Manassas Park City	274	2,464	0	0	0
Martinsville City	302	2,551	0	0	0
Mathews	185	1,260	0	0	0
Mecklenburg	694	4,837	0	0	0
Middlesex	191	1,286	1	1	1
Montgomery	1,233	9,744	0	1	1
Nelson	270	1,935	1	0	2
New Kent	390	2,784	0	0	0
Newport News City	4,157	31,298	1	2	1
Norfolk City	4,815	34,488	4	6	0
Northampton	273	1,842	1	0	0
Northumberland	167	1,479	0	0	0
Norton City	110	805	0	0	0
Nottoway	362	2,428	0	0	0
Orange	523	5,319	0	0	1
Page	424	3,689	0	0	0
Patrick	430	2,644	0	0	0
Petersburg City	489	4,675	1	1	1
Pittsylvania	1,380	9,252	1	1	1
Poquoson City	267	2,491	0	0	0
Portsmouth City	2,067	15,323	0	2	0
Powhatan	590	4,476	0	1	1
Prince Edward	515	2,615	0	1	0
Prince George	783	6,273	0	1	0
Prince William	8,429	73,918	5	3	1

SCHOOL DIVISION	SPED PUPILS AGES 0-22+	TOTAL PUPILS	Due Process Hearings Filed	SPED Complaints Filed	Mediation Cases
Pulaski	783	4,849	0	0	1
Radford City	219	1,497	0	0	0
Rappahannock	124	921	0	0	0
Richmond County	159	1,213	0	0	0
Richmond City	4,589	23,200	2	6	1
Roanoke	2,224	14,937	1	1	2
Roanoke City	1,834	13,214	1	0	1
Rockbridge	365	2,888	2	1	2
Rockingham	1,352	11,944	1	0	1
Russell	773	4,326	0	0	1
Salem City	489	3,930	0	0	0
Scott	713	3,963	0	0	0
Shenandoah	813	6,326	0	1	0
Smyth	836	5,042	0	0	0
Southampton	479	2,850	1	0	0
Spotsylvania	2,907	24,116	0	3	1
Stafford	2,410	26,850	0	0	1
Staunton City	398	2,734	1	0	1
Suffolk City	1,710	14,093	1	1	3
Surry	142	1,041	0	0	0
Sussex	195	1,215	0	0	0
Tazewell	993	6,864	0	1	1
Virginia Beach City	9,489	71,564	4	11	4
Warren	608	5,434	0	1	0
Washington	1,111	7,514	1	0	0
Waynesboro City	332	3,188	0	0	0
West Point	72	773	0	0	0
Westmoreland	192	1,818	0	0	0
Williamsburg-James City	1,545	10,539	2	1	3
Winchester City	605	3,801	0	0	0
Wise	907	6,782	0	0	0
Wythe	467	4,419	1	0	0
York	1,255	12,909	0	1	2

SCHOOL DIVISION	SPED PUPILS AGES 0-22+	TOTAL PUPILS	Due Process Hearings Filed	SPED Complaints Filed	Mediation Cases
Department of Ed.			1	0	0
OTHER – VSDB-S			0	0	0
TOTALS	166,659	1,235,309	81	121	105