

**Statement of Administrative Impact and Projected Costs of Implementing the
Proposed Revisions to 8 VAC 20-80 et seq., Regulations Governing Special Education
Programs for Children with Disabilities in Virginia**

Prior to the adoption of any regulation affecting school divisions, Section 22.1-17 of the *Code of Virginia* requires that the Board of Education and the Department of Education shall prepare a statement of the administrative impact of such regulation on school divisions and the projected costs of implementing and complying with such regulation and shall send a copy thereof to each division superintendent.

The Board of Education is in the process of revising its *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. The proposed revisions were published in Volume 16, Issue 9 (January 17, 2000) of the Virginia Register of Regulations.

Authority: The authority to revise the regulations is established in §§ 22.1-16 and 22.1-214 of the Code of Virginia. In addition, the Individuals with Disabilities Education Act (IDEA, 20 USC §1400 et seq.) requires that Virginia revise its regulations governing special education to conform with the IDEA statute and regulations. On March 29, 1999, the Superintendent of Public Instruction signed an assurance statement indicating that Virginia will revise its statutes, regulations, policies and procedures to make them fully consistent with IDEA. Virginia's receipt of federal funding is dependent upon meeting this assurance. In 2000-01, the total estimated IDEA funding Virginia will be receiving is \$122 million, with \$114 million flowing directly to localities. (The remainder funds Virginia Department of Education training and technical assistance to local school divisions and compliance and monitoring requirements.)

Purpose: The purpose of these regulations is to align Virginia's special education regulations with the federal *IDEA* regulations that were issued on March 12, 1999 to ensure Virginia's continued eligibility for federal special education funding. The revision incorporates provisions of the *Code of Virginia* as well as other regulations that apply to the provision of special education programs and strives to clarify areas of ambiguity in the previous regulations. The regulations are essential to protect the health, safety or welfare of students with disabilities in Virginia. By ensuring that Virginia's regulations comport with federal law and regulations, we ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards and protections guaranteed by federal law.

Substance of the regulation:

The regulations reflect the requirements of federal law (the *Individuals with Disabilities Education Act (IDEA)*, effective June 4, 1997) and regulations (34 CFR Part 300, effective May 11, 1999). Changes to the proposal published in the Virginia Register of Regulations were made in response to public comment, further directions from the

United States Department of Education, and actions of the 2000 Virginia General Assembly.

The regulations contain provisions governing:

- ❑ Responsibilities of the Virginia Department of Education;
- ❑ Responsibilities of local school divisions and state operated programs;
- ❑ Requirements associated with child find, evaluation, eligibility and provision of services to children with disabilities.
- ❑ Procedural safeguards, including notice requirements, complaints, mediation and due process;
- ❑ Funding.

Estimated Administrative Impact:

Currently, local school divisions are required to comply with the provisions of *IDEA* since they are recipients of federal funding and have been required to do so since Amendments were signed into law on June 4, 1997. The proposed revisions to the Virginia regulations incorporate the changes created by the 1997 Amendments to *IDEA*. The following list reflects the changes will reduce administrative burden on local school divisions.

- ❑ Recognize foster parents as the parents in certain circumstances permitted by *IDEA*, eliminating the requirements regarding appointing a surrogate parent.
- ❑ Include a staffing model that will permit educating children with disabilities in a departmentalized fashion.
- ❑ Clarify that teachers of pre-school aged children with visual, hearing or speech-language impairment do not need to be endorsed in early childhood special education.
- ❑ Permit cross-categorical special education staffing in regional or local jails.
- ❑ Permit an additional year of waiver of educational interpreting requirements, under certain conditions.
- ❑ Limit new student speech-language screening to children grades K through 3 (eliminating the requirement for grades 4 – 12); permit use of a screening conducted prior to school enrollment; permit re-screenings within an additional 60 days.
- ❑ Limit parent notification requirements associated with screenings to notification about the screening and notification of the parents of children who fail the screening.
- ❑ Include the child study committee, allowing for a committee's review of a child's instructional needs.
- ❑ Retain the 5-day timeline for making referrals for special education evaluation.
- ❑ Delete timelines for hearing rescreening during the special education evaluation process, providing more local flexibility.
- ❑ Clarify that the process of determining needed evaluation data can serve as the evaluation if the decision is made that no additional evaluation data is needed, reducing the amount of evaluations that may be conducted.
- ❑ Eliminate the eligibility committee that is unique to Virginia. School divisions made consolidate the eligibility and IEP committees, as appropriate, during meeting to

- determine initial eligibility, continuing eligibility or termination of eligibility.
- ❑ Clarify that a child may have more than one disability and children do not need to be classified by a disability to be eligible for special education.
 - ❑ Enable local school divisions to elect whether to use the special education category developmental delay for school-aged children aged 5 – 8.
 - ❑ Clarify that related services can be added at an IEP meeting, not requiring that a separate eligibility meeting be held.
 - ❑ Delete requirement to document the strengths of the child, concerns of the parents, results of the initial or most recent evaluation, the child’s performance on state or division-wide assessments, and special factors on the IEP.
 - ❑ Delete requirement that local school divisions provide preschool-aged children with either an IEP or an IFSP.
 - ❑ Eliminate language from the 1994 regulations regarding placement of children, eliminating any suggestion of another meeting to determine placement. The protections for children and parents are retained in the IEP section of the regulations.
 - ❑ Add language to clarify that school divisions’ obligation with respect to Comprehensive Services Act team placement is limited to special education and does not include any obligation for non-educational services.
 - ❑ Delete language requiring local school divisions to ensure least restrictive environment provisions are met when children are in public or private institutions. The protections for children and parents are retained when the local school division places the child.
 - ❑ Limit the obligation of school divisions regarding special education services for children placed by their parents in private school when special education is not an issue.
 - ❑ Clarify that decisions regarding reevaluation of a child placed in a private school by the school division may be made without a meeting.
 - ❑ Add language to make clear that a 45-day interim alternative education placement may be repeated.
 - ❑ Revise due process system.
 - ❑ Establish a provision whereby an adult student’s rights can be transferred to an educational representative that is less cumbersome than a legal competency hearing. Revised this process, in response to comments, to clarify the limited role of local school divisions.
 - ❑ Establish a single mediation system in Virginia administered and funded by VDOE.
 - ❑ Clarify that the annual training of surrogate parents must only be conducted when there is new information.
 - ❑ Provide increased flexibility in use of IDEA funds (IDEA requirement).
 - ❑ Clarify that school divisions work in collaboration with the early intervention programs to meet the IDEA requirement to conduct child find with children aged 0 – 2.

The following administrative requirements of school divisions are new to the Virginia regulations.

- ❑ Educate children in the division who are homeless, migrant, advancing from grade to

- grade, suspended or expelled, or who are in regional or local jails (IDEA requirement).
- ❑ Educate children placed in nursing facilities with pediatric units, subject to the provisions of Medicaid, whose parents are residents of the school division (OCR directive).
 - ❑ Use trained paraprofessionals (IDEA requirement).
 - ❑ Administer alternative assessments (IDEA requirement).
 - ❑ Make information on alternative staffing patterns available to parents and the effected teacher(s).
 - ❑ Make copies of the evaluation reports available to parents no later than 24 hours before the meeting to determine eligibility.
 - ❑ Make information gathered during a special education evaluation available to the child's teacher if the child is found not eligible.
 - ❑ Assure the proper functioning of hearing aids (IDEA requirement).
 - ❑ When a child transfers from another state, require the local school division to determine if it accepts the eligibility determination and the IEP from the other state, and, if they do not accept it, conduct its own eligibility determination and IEP meeting.
 - ❑ Review any accommodations or modifications to transportation discussed by the IEP team with transportation personnel to ensure they do not violate any state or national safety standard.
 - ❑ Include the general education teacher as an additional member of the IEP team (IDEA requirement).
 - ❑ Inform parents of their child's progress toward IEP goals (IDEA requirement).
 - ❑ Permit tape recording of IEP meetings unless the school division has developed a written policy prohibiting, limiting, or otherwise regulating the use of audio recording devices at IEP meetings.
 - ❑ Provide parents with a list of the issues that must be considered (strengths of the child, concerns of the parents, results of the initial or most recent evaluation, the child's performance on state or division-wide assessments, and special factors) during the IEP meetings.
 - ❑ If enrolling a child at one of the Virginia schools for the deaf, the blind, or the multi-disabled and that school, establish a contractual agreement addressing the roles and responsibilities of each party.
 - ❑ Include manifestation determination, functional behavioral assessments, behavioral intervention plans, and interim alternative education placements in local discipline provisions (IDEA requirement).
 - ❑ Use the expedited due process hearing procedures (IDEA requirement).
 - ❑ Appeal a due process hearing to the court due to the elimination of the second tier of due process hearing.
 - ❑ Send a copy of their response to a complaint to the complainant.
 - ❑ Notify parents and the adult child that rights transfer to the student upon reaching the age of majority (IDEA requirement).
 - ❑ May appeal VDOE letters of finding in complaint cases.
 - ❑ Comply with requirements regarding the use of public or private insurance (IDEA requirement).

Projected Costs of Implementation:

Upon passage of *IDEA* and promulgation of the implementation regulations, local school divisions were required to change their administrative procedures to comply with the requirements of the Act. As a result, local school divisions have already experienced any fiscal impact resulting from the *IDEA* requirements. The *Special Education Program Standards* are included in these regulations without an impact on the state basic aid funding and state special education add-on funding.

IDEA specifies that there is no population exempt from the requirement to provide special education and related services to eligible students, including eligible students in correctional facilities. In Virginia, education services are provided in juvenile and adult state correctional facilities, and regional and local detention homes. The *IDEA* provisions make clear that services must be provided in regional and local jails. The 2000 General Assembly appropriates funds to fully reimburse school divisions for the costs of providing services.

The *IDEA* requirement for states to develop and implement a system for alternate assessment became effective June 1997. The General Assembly appropriated \$2 million in general funds for this purpose for the 2000-02 biennium. As part of the state assessment system, funding will be requested in future years.

The following administrative requirements may have a potential for an increase in the cost of implementing the proposed regulations, to the extent school divisions have not previously met these requirements.

- ❑ Educating children who are homeless, migrant, suspended or expelled, advancing from grade to grade, or in nursing facilities with pediatric units, to the extent the school divisions have not previously served these students.
- ❑ Local administration of the alternate assessment system.
- ❑ Training paraprofessionals.
- ❑ Making copies of evaluation reports available to parents 24 hours in advance of the meeting to determine eligibility.
- ❑ Providing reports to parents of their child's progress.
- ❑ Inclusion of the general education teacher in the IEP meeting.
- ❑ Establishment of a contractual agreement with the Virginia schools for the deaf, the blind, or the multi-disabled.
- ❑ Completion of functional behavioral assessments and behavioral intervention plans.

The federal assistance to local school divisions has increased by \$48.6 million to \$ 114.5 million (an increase of 74%) since passage of the *IDEA* Amendments in 1997. School divisions may use their additional federal funds to support the additional costs.