



Economic Impact Analysis Virginia Department of Planning and Budget

8 VAC 20-81 – Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Department of Education
December 23, 2007

Summary of the Proposed Amendments to Regulation

The Board of Education (Board) proposes numerous changes to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, including: 1) repealing multiple requirements and timelines regarding Child Study Committees, 2) establishing uniform for criteria special education eligibility, 3) repealing the requirement for parental consent to end special education services, 4) requiring that secondary transition services be provided to children with disabilities starting at age fourteen, 5) switching responsibility for due process staffing from the Virginia Supreme Court to the Virginia Department of Education (VDOE), 6) amending composition requirements for local advisory committees, and 7) eliminating the requirement that short-term objectives be part of Individualized Education Programs (IEP).

Result of Analysis

The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact

Since these regulations were last amended approximately eight years ago, federal special education law has changed. Many of the proposed changes to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia by the Board are for the purpose of reflecting current federal law and guidance from the U.S. Department of Education Office of Special Education Programs (OSEP). As federal law has changed and OSEP has

issued guidance, VDOE has informed local school divisions of the applicable changes in requirements. The Commonwealth receives federal funding for special education which is passed on to local school divisions. This funding is at risk if federal law and OSEP guidance is not followed. Thus the proposed amendments to these regulations which reflect current federal law and guidance from OSEP do not in practice cause change in special education requirements.

The Board does propose numerous amendments which do not merely reflect current federal law and guidance from OSEP. The following are proposed amendments which unambiguously produce net benefit for the Commonwealth: 1) repealing multiple requirements and timelines regarding Child Study Committees, 2) switching responsibility for due process staffing from the Virginia Supreme Court to VDOE, 3) requiring that local school divisions' programs for early childhood special education just provide a schedule comparable in length to school age students rather than exactly a 5 ½ hour day, 4) accepting an additional reputable credential source for interpreters hired by school divisions for deaf students, 5) replacing specific provisions which outlined how local school divisions were required to conduct their annual special education public awareness campaign with a single provision which requires that each local school division have procedures to document its public awareness campaign, 6) replacing the required timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings with 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, 7) adding a provision that the parent and the eligibility group may agree in writing to extend the 65 day timeline to obtain additional data for any eligibility determination, 8) amending language so that 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, 9) requiring that local school divisions provide relevant parents information on dispute resolution options, 10) adding language that insures that if a child with a disability is placed in a private residential school under the Comprehensive Services Act (CSA) and his parents move from one Virginia school district to another, that there is no lapse in service and payments due to the transition, 11) repealing the requirement that school divisions and the Virginia schools (Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton) develop contractual agreements to ensure compliance with the federal and state

special education requirements, 12) specifying that special education hearing officers may not require parties to submit briefs as a condition of rendering a decision, but that the special education hearing officer may permit such a submission on the parties' request, 13) no longer requiring school divisions to develop and submit an implementation plan following the rendering of a due process decision or the withdrawal of a hearing request, 14) repealing the requirement that a surrogate parent reside in the same general geographic area as the child, 15) permitting school division staff to serve on local advisory committees while still requiring that the majority of the committee be parents of children with disabilities or individuals with disabilities and 16) no longer requiring school divisions to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.

The following amendments proposed by the Board produce both benefits and costs: 1) limiting the provisions which previously permitted waiver of the qualifications for interpreters hired by school divisions for deaf students, 2) changing the timeline for the completion of a special education evaluation to be triggered by the receipt of parent consent rather than the receipt of the referral for evaluation by the Director of Special Education or his designee, 3) establishing uniform criteria for special education eligibility, 4) repealing the requirement for parental consent to end special education services, 5) requiring that secondary transition services be provided to children with disabilities starting at age fourteen, 6) eliminating the requirement that short-term objectives be part of IEP, and 7) requiring that local advisory committees include representation of gender and the ethnic population of the local school division.

According to the Department there have been instances where waivers have been used to employ individuals not fully capable in sign language to act as interpreters for hearing-impaired students. Consequently the Board proposes to limit the provision that permits such waivers. Some school divisions already have difficulty finding interpreters. This proposed amendment would further tighten the supply of candidates for these positions. The proposed amendment is beneficial in that hearing-impaired students will likely have fully competent interpreters more frequently. On the other hand, it will likely be more costly for some school divisions to meet the tighter standard.

Currently the 65-day timeline to complete qualification evaluation for special education services starts upon the receipt of the referral for evaluation by the Director of Special Education.

The Board proposes to have the 65-day period officially start upon the receipt of parental consent rather than the receipt of the referral for evaluation. Since the evaluation cannot start until there is parental consent, in practice a long delay in receipt of parent consent can leave far less than 65 days to perform the evaluation. The proposed change will more consistently allow enough time to perform full evaluations. On the other hand, the proposal does introduce the risk of delay in starting beneficial services for some students who will qualify for special education services. This may happen either due to a gap in time between receipt of the referral for evaluation by the Director of Special Education or his designee and the subsequent request for parental consent, or due to a delay in response by the parents.

The Board proposes establishing uniform criteria for the following disabilities: autism, deafness, developmental delay, hearing impairment, mental retardation, other health impairment, speech or language impairment, and visual impairment. Currently each school division sets its own criteria for each of these disabilities. The uniform criteria would be beneficial in that when students move between school divisions the new school division would not necessarily need to spend the time and resources to conduct a new evaluation knowing that the previous school division used the same criteria. The student would potentially be able to start receiving appropriate services sooner. The Department believes that statewide the proposed uniform criteria will not significantly increase or decrease the number of students who qualify for services for each disability. There are no clear costs to the proposed establishment of uniform criteria beyond some lost freedom for establishing criteria by the local school divisions; but if some school divisions did have criteria that somehow maximized net benefits to the students and the public better than the proposed uniform criteria, then there would be cost within those divisions from the requirement to conform to the uniform criteria.

Under current regulations parental consent must be given to end special education services. The Board proposes to allow school divisions to end special education services for individual students when they no longer qualify by the established criteria. This will allow school divisions to save time and resources spent “inappropriately,” and may in fact benefit affected students by having them receive more appropriate education. On the other hand, the proposal will take away a specific parental right.

The current regulations require that secondary transition services be provided to children with disabilities starting at age fourteen. This same requirement existed in Federal law when these regulations were last amended approximately eight years ago. Since then Federal law was changed to only require that secondary transition services be provided to children with disabilities starting at age sixteen. Under the presumption that the earlier Board had intended to match Federal law when it set fourteen as the starting age for transition services, the Virginia Office of the Attorney General advised the Board and VDOE to consider the requirement for local school divisions to be that secondary transition services be provided to children with disabilities starting at age sixteen to match the new Federal law. VDOE consequently informed local school divisions that they were not required to provide transition services to 14-year old and 15-year-old students. The current Board has decided to require that transition services be provided to 14-year old and 15-year-old students as well to older special education students still in school. Thus, by choosing to not amend the current language that states that secondary transition services be provided to children with disabilities starting at age fourteen, the Board will in actuality change the requirement for local school divisions. There are likely significant benefits to providing transition services for special education students. Insufficient information is available to determine if those benefits exceed the costs of supplying those services to 14-year old and 15-year-old students. The Department surveyed five Virginia school divisions of varying sizes regions concerning the annual costs of providing transition services to 14-year old and 15-year-old students. The following are the estimated costs: \$20,000 for School Division A, \$3,000 for School Division B, \$60,000 for School Division C, \$20,000 for School Division D, and \$600,000 for School Division E.

The Board proposes to require that local advisory committees include representation of gender and the ethnic population of the local school division. It is beneficial to include the views and knowledge from all relevant parties involves, but it may be costly to require that time and effort be expended to include individuals who may not be interested in participating. This proposal would likely create greater net benefit if it were to require instead that a good faith effort be made to include representation of gender and the ethnic population of the local school division.

None of the proposed Board amendments to the regulations produce costs that clearly outweigh the benefits.

Businesses and Entities Affected

All 132 school divisions in the Commonwealth are affected by the proposed amendments. School staff and families involved in special education will be particularly affected.

Localities Particularly Affected

All localities are affected.

Projected Impact on Employment

Several proposed amendments would result in saved staff time for school divisions, for example repealing multiple requirements and timelines regarding Child Study Committees. Other proposed amendments would demand increased staff time, for example requiring that secondary transition services be provided to children with disabilities starting at age fourteen. Overall there will not likely be a large impact on total employment if all proposals are implemented.

Effects on the Use and Value of Private Property

The proposed amendments to these regulations are not likely to significantly affect the use and value of private property in the short run. To the extent that the quality of special education instruction is improved due to changes, there may be some positive impact on the value of property produced by former students in the long run.

Small Businesses: Costs and Other Effects

The proposed amendments do not directly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendments do not directly affect small businesses.

Real Estate Development Costs

The proposed amendments do not directly affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act

and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.