

# COMMONWEALTH of VIRGINIA

## Board of Education Agenda



**Date of Meeting:** September 25, 2008

**Time:** 9 a.m.

**Location:** Jefferson Conference Room, 22<sup>nd</sup> Floor, James Monroe Building  
101 North 14<sup>th</sup> Street, Richmond, Virginia

**9:00 a.m. FULL BOARD CONVENES**

**Moment of Silence**

**Pledge of Allegiance**

**Approval of Minutes of the July 17, 2008, Meeting of the Board**

**Public Comment**

**Action/Discussion: Board of Education Regulations**

- A. Final Review of Proposed New *Regulations Governing Public Participation* (8 VAC 20-11-10) and Repeal of *Public Participation Guidelines* (8 VAC 20-10-10 et seq.) Under the Fast Track Provisions of the Administrative Process Act
- B. Final Review of the Proposed Revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.)

**Action/Discussion Items**

- C. First Review of Requests from Three School Divisions for Ratings of Conditionally Accredited
- D. First Review of Requests for Continuation of the Rating of Conditionally Accredited from Eight School Divisions
- E. Report on Petersburg City School's Implementation of the Memorandum of Understanding and Findings of the Division-Level Review
- F. First Review of the 2007-2008 Annual Report on Public Charter Schools in the Commonwealth of Virginia

## **Action/Discussion Items (continued)**

- G. First Review of Plan for Increasing Number of Students Obtaining Industry Certification and Licensures
- H. Final Review of Proposed Board of Education Meeting Dates for the 2009 Calendar Year
- I. First Review of Proposed Revised *Guidelines and Standards of Learning for Family Life Education* as required by the 2008 General Assembly
- J. First Review of the Standards of Quality

## **Report**

- K. Report on the Statewide Dropout Prevention Summit Planned for October 28

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

## **EXECUTIVE SESSION**

## **ADJOURNMENT**

## **IMMEDIATELY FOLLOWING ADJOURNMENT OF BUSINESS SESSION:**

- L. Public Hearing on the Proposed Revisions to the *Regulations Governing Educational Services for Gifted Students*

## **PUBLIC NOTICE**

The Board of Education members will meet for dinner at 6:30 p.m. at the Crowne Plaza Hotel on Wednesday, September 24, 2008. Items for the Board agenda may be discussed informally at that dinner. No votes will be taken, and it is open to the public. The Board president reserves the right to change the times listed on this agenda depending upon the time constraints during the meeting.

### **GUIDELINES FOR PUBLIC COMMENT**

1. The Board of Education is pleased to receive public comment at each of its regular monthly meetings. In order to allow the Board sufficient time for its other business, the total time allotted to public comment will generally be limited to thirty (30) minutes. Individuals seeking to speak to the Board will be allotted three (3) minutes each.
2. Those wishing to speak to the Board should contact Dr. Margaret Roberts, Executive Assistant for Board Relations at (804) 225-2924. Normally, speakers will be scheduled in the order that their requests are received until the entire allotted time slot has been used. Where issues involving a variety of views are presented before the Board, the Board reserves the right to allocate the time available so as to insure that the Board hears from different points of view on any particular issue.
3. Speakers are urged to contact Dr. Roberts in advance of the meeting. Because of time limitations, those persons who have not previously registered to speak prior to the day of the Board meeting cannot be assured that they will have an opportunity to appear before the Board.
4. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views.

# Board of Education Agenda Item

Item: \_\_\_\_\_ A. \_\_\_\_\_

Date: September 25, 2008

Topic: Final Review of Proposed New Regulations Governing Public Participation (8VAC 20-11-10 et seq.) and Repeal of Public Participation Guidelines (8VAC 20-10-10) Under the Fast-Track Provisions of the Administrative Process Act

Presenter: Mrs. Anne D. Wescott, Assistant Superintendent for Policy and Communications

Telephone: 804/ 225-2403

E-mail: [Anne.Wescott@doe.virginia.gov](mailto:Anne.Wescott@doe.virginia.gov)

## Origin:

- Topic presented for information only (no board action required)
- Board review required by
  - State or federal law or regulation
  - Board of Education regulation
  - Other: Board of Education By-laws
- Action requested at this meeting
- Action requested at future meeting:

## Previous Review/Action:

- No previous board review/action
- Previous review/action: First Review of Proposed Regulations  
date: July 24, 2008  
action: Received for first review and approved for public comment

**Background Information:** Public participation procedures exist to promote public involvement in the development, amendment, or repeal of state regulations.

Under § 2.2-4007.02 of the *Code of Virginia*, every rulemaking body in Virginia is required to adopt public participation procedures and to use such procedures in the development of its regulations. In compliance with this provision of the *Code*, the Board of Education has *Public Participation Guidelines* (8VAC 20-10-10), which were promulgated in 1984. The guidelines have not been revised since that time.

The *Code of Virginia* was modified during the 2008 General Assembly session. The amendments, which took effect on July 1, 2008, specify that agencies will have until December 1, 2008, to either adopt model public participation regulations issued by the Department of Planning and Budget (DPB), or, if they need to make significant changes to the model regulations, to file a fast-track regulatory action with DPB by that time.

DPB has now issued the required model regulations entitled *Public Participation Guidelines*. Since the legislative intent is to standardize the public participation process so that interested members of the public know how and when to comment and/or participate in various topics of interest, all state agencies were urged to consider whether any modifications to DPB's model regulations are appropriate.

The Department of Education's policy division has carefully reviewed the model regulations and is recommending to the Board of Education that minor, non-controversial modifications be made for clarity and consistency.

Hence, the fast-track rulemaking process is recommended in order to complete the new regulation. By simultaneous action, the current, out-dated regulation will be repealed and replaced by the new regulation.

The Board of Education approved the proposed changes and asked that the proposals be distributed for a 45-day public comment period. The proposals were subsequently distributed by department staff. No comments were received during the comment period.

**Summary of Major Elements:** The minor, non-controversial modifications to DPB's model regulations are necessary in order to make the public participation rules consistent with Board of Education policies and procedures for public participation.

In no instance is the intent or meaning of a provision changed or modified from the model public participation regulations as promulgated by DPB.

The proposed changes are non-controversial because of the following:

- In every case, the proposed changes are consistent with long-standing Board of Education practice and procedures;
- The words and terms are consistent with current, clearly understood use;
- The changes serve to further clarify requirements so that they are easily understood by the Board of Education's constituents; and
- The provisions of the model guidelines and the proposed modifications are consistent with current public participation practices used by the Board of Education. Complying with the new provisions will require few modifications in the Board's current practice.

The recommended modifications are shown in the attachment.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board of Education adopt the fast-track *Regulations Governing Public Participation* and authorize staff to forward the regulations to the final steps of the fast-track regulatory process.

**Impact on Resources:** The impact on resources is expected to be insignificant for both the agency and for the public. The agency can absorb any such cost within its current resources.

**Timetable for Further Review/Action:** After adoption by the Board of Education, staff will forward the regulatory package through the final steps required by the fast-track procedures under the Administrative Process Act (APA) and relevant sections of the Executive Order. After the required steps are completed the regulations will go into effect.



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Education
<b>Virginia Administrative Code (VAC) citation</b>	8VAC 20-10-10 (Repeal) 8VAC 20-11-10 et seq. (Promulgate)
<b>Regulation title</b>	Regulations Governing Public Participation
<b>Action title</b>	Promulgate regulation pursuant to 2008 Code revisions to promote public involvement in the development, amendment, or repeal of Board of Education regulations; simultaneous repeal of current, outdated regulation
<b>Date this document prepared</b>	September 25, 2008

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

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The present action promulgates regulations entitled *Regulations Governing Public Participation* [8VAC 20-11-10 et seq.] and simultaneously repeals the Board of Education's current regulation entitled *Public Participation Guidelines* [8VAC 20- 10]. The new regulations are intended to promote public involvement in the development, amendment, or repeal of Board of Education regulations.

The present action proposes minor, non-controversial revisions to model public participation guidelines as developed by the Department of Planning and Budget, under the *Code of Virginia* § 2.2-4007.02, as amended. The changes proposed by the Board of Education are non-controversial in that, in every case, the proposed changes are consistent with long-standing Board of Education practice and procedures and the terms are consistent with current, clearly understood use and serve to clarify a provision. In no instance is the intent or meaning of a provision changed or modified from the model public participation guidelines as promulgated by DPB.

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On (.....date.....), the Virginia Board of Education adopted the *Regulations Governing Public Participation* (8VAC 20-11-10 et seq.), as proposed. By simultaneous action, the Board of Education repealed the regulations entitled *Public Participation Guidelines* (8VAC 20-10).

## Legal basis

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

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Under § 2.2-4007.02 of the *Code of Virginia*, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. This law was modified during the 2008 General Assembly session, and the 2008 modifications permit the use of fast-track rulemaking procedures to promulgate the public participation regulations. By action of the General Assembly, the adoption of public participation rules is mandatory, and the use of the fast-track process is discretionary.

Pursuant to the *Code of Virginia*, Board of Education, as the promulgating entity, has adopted new public participation regulations as described herein. In doing so, the Board of Education has made minor, non-controversial modifications in the model guidelines as developed by DPB; thus, it is necessary to utilize the fast-track rulemaking process.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of the *Regulations Governing Public Participation* is to promote public involvement in the development, amendment, or repeal of Board of Education regulations.

The Board of Education's rationale for the regulation is to comply with state law, as described above. The Board of Education proposes minor, non-controversial modifications to the model public participation guidelines developed by DPB; therefore the fast-track process is being utilized.

The proposed regulation is essential to protect the welfare of citizens because it is the Board of Education's position that those who are affected by a decision have a right to be informed and involved in the decision-making process. Hence, the regulations set forth a uniform procedure for the public's contribution to the Board in its rulemaking process.

The goals of the proposed regulations are:

1. To set forth a procedure to seek out and facilitate the involvement of those potentially affected by or interested in a regulatory action;
2. To communicate clearly to the Board of Education's constituents how they may participate in the regulatory process in a meaningful way; and
3. To ensure that the Board of Education's regulatory procedures are in full compliance with state laws and regulations governing such actions.

## Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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The changes proposed by the Board of Education are non-controversial in that, in every case, the proposed changes are consistent with long-standing Board of Education practice and procedures; the terms are consistent with current, clearly understood use; and the proposed language serves to clarify a provision. In no instance is the intent or meaning changed from the model public participation guidelines as promulgated by DPB.

## Substance

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

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The proposed regulations are consistent with the model public participation guidelines developed by DPB. The Board of Education has made minor adjustments in the model guidelines, including language to clarify the advisory capacity standing advisory committees. Certain terms are clarified to be consistent with terminology in current use in the field.

The current regulation (8VAC 20-10-10) is being repealed because it has not been amended since 1984. It is now seriously outdated because it pre-dates most of the current provisions of the Administrative Process Act. It also pre-dates the use of the Internet and electronic communications and, thus, contains no provision for electronic transmission of notices and comments.

## Issues

Please identify the issues associated with the proposed regulatory action, including:

1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

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The advantage to the Commonwealth, the Board of Education, and the public is that the proposed regulations are intended to inform the public in a way that encourages public participation and to make such participation meaningful, convenient, cost-effective, and accessible to constituents. There are no known disadvantages to the Commonwealth, the public, or the Board of Education.

## Requirements more restrictive than federal

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

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There are no known applicable federal requirements.

## Localities particularly affected

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

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All Virginia localities are affected equally by the proposed regulations.

## Regulatory flexibility analysis

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

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The provisions of the proposed regulation have no adverse impact on small business entities. All Board of Education constituencies are affected equally. No alternative flexibility was considered necessary or advantageous. In some instances, statewide professional or special interest groups may be considered a private enterprise and, thus, may be

considered a “small business.” However, the provisions have no adverse affect on any entity—private, public, civic, or proprietary.

## Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>Insignificant; can be absorbed within current resources.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>Insignificant.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>All Virginia residents are constituents of the Board of Education’s services through its regulatory authority with public schools in the 132 local school divisions in Virginia. Inquiries, comments, and requests for information come from any source: school personnel, potential teachers, parents, other state agencies, other states, professional/civic organizations, and political leaders.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The provisions have no specific impact on small business.</p> <p>Affected entities:          132 local school divisions          100,000 classroom teachers          50,000 public school administrators and other staff          100 education/advocacy organizations          1.2 million schoolchildren and their families</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>The regulations pose an insignificant impact on interested participants.</p>

## Alternatives

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

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The Board of Education widely distributed the proposed regulations for a 45-day public comment period, during which time no comments were received. The proposed regulations have no impact on small business.

## Family impact

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

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The proposed regulations have no impact whatsoever on the institution of the family, family stability, parental authority or rights, supervision of children, economic self-sufficiency, self-pride, responsibility for family, marital commitment, or family income.

## Detail of changes

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

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

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For changes to existing regulations, use this chart:

*(Chart begins on next page)*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8VAC 20-10-10			Entire text is proposed for repeal because the provision is outdated. Specifically, current provisions pre-date the Internet and electronic communications and, thus, contain no provision for electronic transmission of notices and comments. Current provisions also pre-date most of the requirements contained in the APA.
	8VAC 20-11		The Board of Education proposes to entitle the regulations <i>Regulations Governing Public Participation</i> , rather than <i>Public Participation Guidelines</i> . The term “guidelines” is used in DPB’s model regulations. The change to the term “regulation” is for clarity and consistency in the terms in use by the Board of Education in regulatory matters. Historically, the Board of Education (and the Department of Education) uses the term “guidelines” only for non-regulatory purposes; i.e., actions or documents that are non-binding or in instances where best practices are being recommended as a form of technical assistance. The term “regulation” (rather than “guidelines”) is used in actions governed by the Administrative Process Act.
	8VAC20-11-10	N/A	No changes from the model guidelines
	8VAC 20-11-20	N/A	Clarifies that the term “agency” refers to the Board of Education (rather than the Department of Education, which is sometimes referred to in the field as the “agency”).
	8VAC 20-11-30	N/A	<p>The proposed regulation clarifies that the Board maintains one centralized list of persons to be notified of regulatory actions, regulatory notices, public meetings, and all other notifications required by FOIA and the APA. Thus, the Board proposes minor changes in the notification provisions that are consistent with agency policy.</p> <p>The proposed regulations clarify a person will be deleted from the electronic notification list after two notifications of an undeliverable electronic message or US mail.</p>
	8VAC 20-11-40	N/A	No changes from the model guidelines

	8VAC 20-11-50	N/A	The proposed regulations clarify that written comment may be submitted in writing at any time during the public comment period. Comments submitted via the Town Hall public forum are included. Oral comments will be received at public hearings or Board of Education meetings. These provisions permit all Board members to review all comments, and it enables staff to obtain e-mail address or mailing address so they may be provided the summary of comments.
	8VAC 20-11-60	N/A	No changes from model guidelines
	8VAC 20-11-70	N/A	No changes from model guidelines
	8VAC 20-11-80	N/A	No changes from model guidelines
	8VAC 20-11-90		No changes from model guidelines
	8VAC 20-11-100	N/A	No changes from model guidelines
	8VAC 20-11-110	N/A	No changes from model guidelines

Enter any other statement here

**TO BE REPEALED:**  
**CHAPTER 10**  
**BOARD OF EDUCATION PUBLIC PARTICIPATION GUIDELINES**

**~~8VAC20-10-10. Guidelines.~~**

~~When the Department of Education or the Board of Education propose regulations or substantial changes to present regulations, a notice of intent will be published in the Virginia Register and the Calendar of Events. The notice will request input from interested parties, and will contain information as outlined in the guidelines.~~

~~Identification and notification of interested parties.~~

~~1. The Department of Education shall utilize mailing lists of interested parties and add to the lists as groups and individuals express an interest in the agency's regulatory activities.~~

~~2. Notice of proposed regulatory action shall include:~~

~~a. Subject of proposed regulation;~~

~~b. Identification of parties that will be affected by regulation;~~

~~c. Purpose of proposed regulation;~~

~~d. Place where proposed regulation can be obtained;~~

~~e. Request for comments from interested parties;~~

~~f. Place and time of public meetings when scheduled;~~

~~g. Name, address, and telephone number of contact person; and~~

~~h. Date for submission of information by interested parties.~~

~~3. Methods of seeking input from interested parties shall include:~~

~~a. The Registrar publishing the advertisement of the proposed regulation in a newspaper of general circulation at the capital and coordinating with the Department of Education the publication of the proposed regulation in a locality where it has a particular effect;~~

~~b. Mailing of proposed regulation to groups or individuals that would be affected or have an interest in the regulation, and requesting comments in writing;~~

~~c. Advertising the intent of the board to consider a regulation in various department publications which are distributed on a statewide basis;~~

~~d. Provide information or speak on regulation as requested by interested parties;~~

~~e. Put proposed regulation on board's monthly agenda for discussion in committee or full board;~~

~~f. Consult with advisory committees that are involved in an activity requiring regulatory action;~~

- ~~g. Use media other than print, if necessary, to notify public of proposed regulation;~~
- ~~h. Inform appropriate interest groups that meet with Board of Education periodically; and~~
- ~~i. Publish proposed regulation in Virginia Register and provide for 60-day comment period.~~

***NOTE: The mark-up shown below is based on the model Public Participation Guidelines developed by the Department of Planning and Budget***

CHAPTER 11  
REGULATIONS GOVERNING PUBLIC PARTICIPATION GUIDELINES

Part I  
Purpose and Definitions

**8VAC 20-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Education. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

**8VAC 20-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Education, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the ~~agency~~ Board of Education.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) that has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II Notification of Interested Persons

### **8VAC 20-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

~~C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.~~

~~D. C.~~ When electronic mail is returned as undeliverable on ~~multiple~~ two occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

~~E. D.~~ When mail delivered by a postal carrier is returned as undeliverable on ~~multiple~~ two occasions, that person may be deleted from the list.

~~F. E.~~ The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

#### **8VAC 20-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 8VAC 20-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed or a repropoed regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

### Part III Public Participation Procedures

#### **8VAC 20-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues, the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

**8VAC 20-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

**8VAC 20-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

**8VAC20-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. A NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

**8VAC 20-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP, NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

**8VAC 20-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under 8VAC 20-11-100.C.3.

**8VAC 20-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.



The revision of the state regulations governing special education is required to ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates is required to ensure Virginia's continued eligibility for federal special education funding, which will total \$276.6 million in 2008-2009.

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

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

The information received via public comment and the stakeholders' meeting was reviewed and considered during the development of the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, which were presented to the Board of Education on September 26, 2007.

A 60 day public comment period began on April 28, 2008, and ended on June 30, 2008. During that period the Board received 2,233 submissions of public comment from 1,940 individuals and groups, representing 38,752 individual comments. Comments were received via e-mail, the Town Hall, facsimile, mail, and the nine public hearings convened by the Board of Education: Halifax County (May 12, 2008); Abingdon (May 13, 2008); Roanoke (May 14, 2008); Loudoun County (May 15, 2008); Chesterfield County (May 17, 2008); Norfolk (May 28, 2008); Fairfax County (June 2, 2008); Essex County (June 3, 2008); and Charlottesville (June 4, 2008). A summary of the public comments is attached.

### **Summary of Major Elements**

Attached are the proposed *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. Due to the comprehensive nature of the revisions, the current regulations (8 VAC 20-80-10 et seq.), which became effective March 27, 2002, will be repealed, and new regulations will be promulgated by the Board of Education (8 VAC 20-81-10 et seq.). Detail regarding the proposed changes to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* is outlined on pages 4-51 of the attached Virginia Regulatory Town Hall form. Also attached is a document providing the VDOE recommendations for those issues most frequently addressed during the public comment period.

### **Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education accept the additional changes and adopt the attached revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In addition, the Superintendent of Public Instruction recommends that the Board of Education authorize staff of the Department of Education to proceed with the remaining steps required by the Administrative Process Act, and to make any minor technical or typographic changes that do not affect the substance of the standards.

**Impact on Resources:**

The impact on resources for the proposed revisions of these regulations is not expected to be significant.

**Timetable for Further Review/Action:**

The Department of Education will notify local school divisions of the changes when the regulations become effective, as established by the Administrative Process Act.

**KEY ELEMENTS IN THE FINAL DRAFT OF  
PROPOSED SPECIAL EDUCATION REGULATIONS  
Since the Publication of the Proposed 2007 Document**

<b>ISSUE</b>	<b>WHAT VDOE IS RECOMMENDING</b>	<b>RATIONALE</b>
Parental Consent	Retain the 2002 parental consent requirements for the termination of special education and related services, as well as for interim and final IEPs for transfer students.	To preserve the historical Virginia-specific right of parents to consent in matters related to the child's educational needs, such as, the child's receipt of services under initial and on-going IEPs; eligibility determination; changes in disability category, and termination of special education and related services.
Administration of the hearing officers system	Retain the 2002 provision for the responsibility of the administration of the special education hearing officers system being with the Supreme Court of Virginia.	To ensure that there be no appearance of impropriety.
65-day timeline commencement date	Retain the 2002 provision that the 65-day evaluation-eligibility timeline commences when the special education administrator or designee receives the referral for evaluation, rather than from the proposed time of parental consent.	To retain the LEA's responsibility for ensuring the completion of the evaluation-eligibility process in a timely manner.
Eligibility criteria	Revise language regarding: <ul style="list-style-type: none"> <li>• the eligibility criteria for the disability categories, particularly autism; and,</li> <li>• school personnel "identify"; not "diagnose".</li> </ul>	To ensure greater consistency in the identification of children with disabilities and to assist school divisions in identifying a child with disability eligible for special education and related services. To remove confusing language that implies that school personnel "diagnose".
Terms: mental retardation; emotional disturbance	Revise terms "mental retardation" and "emotional disturbance" to "intellectual disability" and "emotional disability".	To be consistent with the actions of the 2008 General Assembly regarding the term "mental retardation". To be responsive to national and statewide consumer perspectives on appropriate terminology.
Functional behavioral assessment	Expand the term and application of "functional behavioral assessment".	To remind consumers that FBAs may be either a review of existing data or the LEA obtaining an evaluation, which in turn triggers the parent's right to

		consent and to request an independent educational evaluation if the parent disputes the LEA's evaluation.
Child Find (Child Study)	Expand the provisions for Child Find to include a framework for school-based teams (formerly known as Child Study Committees), timelines, and parent participation in the LEA's processing of referrals.	To provide sufficient structure to the child find process, while allowing LEAs maximum flexibility of responding to children's educational needs.
IEP Progress Reports	Retain the 2002 language regarding when IEP progress reports are to be provided to parents at the same intervals as provided to non-disabled peers.	To clarify when progress reports are to be provided to parents.
IEP (short-term objectives; benchmarks)	Add clarifying provisions that IEP teams document their consideration of short-term objectives or benchmarks for all students with disabilities while retaining the mandate for short-term objectives or benchmarks for students in the alternate assessment programs.	To emphasize that IEP teams may determine short-term objectives or benchmarks for children with disabilities other than children in the alternate assessment programs. To ensure that such determinations are documented for all children with disabilities.
Secondary Transition	Revise the provisions for secondary transition to differentiate the requirements for 14 and 16 years olds.	To clarify the LEA's responsibilities for these age groups.
Discipline	Expand the general provision for when school administrators render decisions regarding disciplining a student, making the determinations on a "case-by-case" basis and applying exceptional circumstances.	To identify mechanisms available to school administrators in making these decisions.
Due Process	Retain the 2002 provision for school divisions to submit to VDOE an implementation plan following the hearing officer's decision; however, clarify that this requirement applies to hearings that are fully adjudicated.	To ensure that an implementation plan is filed when cases are fully adjudicated but eliminate the requirement for when cases are dismissed or settled, when such a plan is unnecessary.
Due Process	Expand the right to raise additional issues during a due process hearing to the parent when the parent is not the initiating party.	To level the playing field for parents, instead of applying the federal mandate only to LEAs.
Due Process	Add provisions related to VDOE's responsibility for recertifying special education hearing officers and the criteria related to that process.	Based on the Office of the Attorney General's advice, VDOE recommends provisions related to VDOE's current responsibility and practice for recertifying special education hearing officers and the criteria related to that process. In accordance with the current regulations, VDOE has the authority to cap the

		number of special education hearing officers. The recertification process is in concert with the Supreme Court's Rules of Administration.
Surrogate Parents	Retain the 2002 application of parental consent requirements for the termination of special education and related services, as well as for interim and final IEPs for transfer students, to surrogate parents.	To ensure consistency with the requirements under parental consent.
Local Advisory Committee	Add a provision for the LAC composition to include one teacher as a voting member.	To balance the composition of the LAC.
IEP Meetings	Remove the provision that an LEA may refuse a request for an IEP meeting that the LEA considers unreasonable.	While this provision is consistent with guidance provided by the U.S. Department of Education's Office of Special Education Programs (OSEP), it is unnecessary to regulate the issue.
LEA Accountability for child's progress toward meeting IEP goals	Remove the provision that LEAs are not held responsible if the child fails to achieve the growth projected through the annual goals.	While this provision is contained in the current Virginia special education regulations, and remains a provision under OSEP guidance, it is unnecessary to regulate the issue.
Developmental Delay	Retain the proposed 2007 draft language that mandates the age range for children with developmental delay be 2 through 5, inclusive.	Schools divisions that have eliminated the upper age range through age 8 report documented success in providing direct support to children who are at risk for academic or behavioral difficulty in the general education classroom. They have reduced the over identification of children, particularly for children of color and poverty, while at the same time placing more emphasis on timely interventions within their general education programs. Parents and school personnel still retain the right to request to initiate the evaluation-eligibility process of children suspected of having a disability. Some children, served under the DD category from ages 2-5, will continue eligibility for special education and related services and be more properly served in one of the other disability categories, such as autism, other health impaired, or multiple disability.
Discipline - Requisite timeframe to conduct	Retain the proposed 2007 draft language in mandating that a FBA be completed when the IEP team determines that there is a manifestation of the	This provision mirrors the federal regulations in deleting the previous requirement that a FBA be

functional behavioral assessment	child's disability and the disciplinary incident.	triggered by the 11 <sup>th</sup> cumulative day of disciplinary removal in a school year. The regulations emphasize in several sections, including IEPs and Discipline, the adequate protections for students with disabilities while providing IEP teams with the flexibility to develop FBAs and Behavioral Intervention Plans that are responsive to the child's unique needs. LEAs are still required to appropriately review and revise a child's IEP, if the child's behavior is impeding the child's learning or that of others. Parents remain members of the IEP team, and therefore, may fully participate in the development of FBAs and BIPs, and to request one at any time, if the child's behavioral needs warrant it.
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## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-81
<b>Regulation title</b>	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
<b>Action title</b>	Revisions to comply with the "Individuals with Disabilities Education Improvement Act of 2004" and its federal implementing regulations
<b>Date this document prepared</b>	September 4, 2008

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

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The present action proposes substantive changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-80) and promulgate new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student's individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

In response to public comments received, several provisions that were proposed to be significantly revised, or deleted, have been retained, including regarding parental consent for the termination of special education and related services, and the current administration of the due process system.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

During its meeting on September 25, 2008, the Board of Education adopted the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.), and directed the Department of Education to proceed with the requirements of the Administrative Process Act.

**Legal basis**

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

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

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2008-2009, Virginia expects to receive \$276.6 million in federal special education funding.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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

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

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately \$276.6 million in 2008-2009.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8 VAC 20-80) are being repealed and concurrently replaced with new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student's individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia's continued eligibility for federal special education funding. In 2008-2009, federal funding will provide approximately \$244.8 million in direct funding to local school divisions to support special education programs, and provide an additional \$31.8 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

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

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

\* Denotes a substantive change.

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
8 VAC 20-81 et seq.	* References regarding the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H).	Deleted all references to VSDB-H, and made necessary grammatical changes, resulting from the deletions.	The Board of Education officially closed VSDB-H on July 1, 2008.
	The term “mental retardation”	All references to “mental retardation” have been changed to “intellectual disability.” This includes reordering certain provisions to appear alphabetically under “intellectual disability” rather than “mental retardation,” such as in 8 VAC 20-81-10, and 8 VAC 20-80-80.	This revision was made in response to actions taken during the 2008 Session of the Virginia General Assembly, and significant public comment.
	The term “emotional disturbance”	All references to “emotional disturbance” have been changed to “emotional disability.”	The revision was made in response to significant public comment.
	The term “LEA”	All references to “LEA” were changed to “local educational agency.”	The revision was made for consistency.
	Citations, cross-references, and typographical errors	Throughout the document, as appropriate, citations and cross-references were corrected or added, and typographical errors were addressed.	The revisions were made to ensure clarity, correct typographical errors, and to comply with guidance from US DOE.
Foreword	4 <sup>th</sup> paragraph	Deleted “These references are found in the right margin.”	Stylistic change.
	6 <sup>th</sup> paragraph	Corrected included telephone number.	Correct typographical error.
Preamble	Preamble	A new paragraph was added to the end of the preamble, expanding then language regarding the purpose of these regulations.	A public comment noted the need for additional language to provide an overview of the regulations and to clarify their purposes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
8 VAC 20-81-10	* Definition of "Alternate assessment"	Added language: "means the state assessment program, <u>and any school division-wide assessment to the extent that the school division has one</u> , for measuring student performance against alternate achievement standards...."	The US DOE, during its review, noted that children with significant intellectual impairments must have available an alternative for measuring student performance against alternate achievement standards for not only the state assessment programs, but also, to the extent applicable, division-wide assessments.
	* Definition of "Autism"	"A child who manifests the characteristics of autism after age three could be <del>diagnosed</del> <u>identified</u> as having autism if the criteria in this definition are satisfied."	To comply with the federal regulatory requirement.
	* Definition of "Change in placement"	Inserted : "A ' <u>change in placement</u> ' also means any change in the <u>educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.</u> "	In response to public comments, the change was added for clarity.
	* Definition of "Child with a disability"	Inserted: " <u>This also includes developmental delay if the LEA recognizes this category as a disability in accordance with 8 VAC 20-81-80 N.3.</u> "	In response to public comments, the change was added to clarify that a child who is identified as developmentally delayed is a child with a disability if the LEA permits "Developmental Delay" to be an eligibility category.
	* Definition of "Cognitive disability"	Deleted the term and the definition.	Given the change from "mental retardation" to "intellectual disability," this term, and its cross-reference to "mental retardation" is no longer necessary.
	* Definition of "Comprehensive Services Act" (CSA)	Revised definition to state that the CSA "establishes the collaborative administration and funding system <del>that addresses and funds for</del> services for certain at-risk youths	Revised to comply with the language and intent of the CSA.

Section number	Requirement at proposed stage	What has changed	Rationale for change
		and their families.”	
	* Definition of “Dangerous weapon”	Revised the language: “does not include a pocket knife with a blade of less than <del>2½</del> <u>3</u> inches in length.”	The revision is to comply with the <i>Code of Virginia</i> , which is more stringent than the standard of 2 ½ inches, which is included in federal law.
	Definition of “Free appropriate public education” (FAPE)	Inserted language: FAPE means special education and related services that “Include <u>an appropriate preschool</u> , elementary school, middle school or secondary school education in Virginia”.	The revision was made to comply with federal regulatory language.
	Definition of “ Functional behavioral assessment” (FBA)	Inserted language that a FBA “ <del>be</del> <u>include a review of existing data or new testing data or evaluation as determined by the IEP team.</u> ”	In response to public comments, the change was added for clarify that an FBA could include the completion of a new evaluation.
	* Definition of “Impartial special education hearing officer”	Inserted a definition of the term, which “ <u>means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.</u> ”	Included the term to distinguish the special education hearing officer from others included on the general list of hearing officers maintained by the Supreme Court of Virginia.
	* Definition of “Implementation plan”	Reinserted the term with a revised definition, noting the term “ <u>means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.</u> ”	In response to public comment, the role of implementation plans was reinserted to ensure that LEAs comply with hearing officers’ decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for decisions of the hearing officer that simply dismisses a case or identify an agreement between the parties.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	* Definition of “Interpreting services”	Revised the definition to note that it includes “cued <u>speech/language transliteration services</u> ” and to indicate that “interpreting services” includes interpreting services for children who are deaf-blind. Also inserted: “ <u>A child who is not deaf or hard of hearing, but who has expressive or receptive language needs may receive sign language services if directed by the child’s IEP.</u> ”	In response to public comments, the changes were added for clarity, including which students are eligible to receive interpreting services.
	* N/A	Inserted new definition for “Long-term placement,” which states, “ <u>“Long-term placement’ if used in reference to state-operated programs as outlined in 8VAC 20-81-30 H. means those hospital placements which are not expected to change in status or condition because of the child’s medical needs.”</u> ”	In response to public comments, changes were added to 8 VAC 20-81-30. For clarity, a new definition was also inserted.
	Definition of “National Instructional Materials Accessibility Standard”	Inserted language: “ <u>“NIMAS’ means the standard established by the United States Secretary of Education to be used in the preparation of electronic files...”</u> ”	Language to comply with federal regulatory requirements.
	Definitions: “Orthopedic impairment” “Other Health Impairment” “Traumatic Brain Injury”	Reinserted “ <u>that adversely affects a child’s educational performance</u> ” into the definitions for each of these terms.	The language, which appears as part of the federal definition for each of the terms, was included only in 20-81-80 of the proposed regulations as part of the identified eligibility criteria. Reinserted the language into the definition section upon guidance from the US DOE to ensure clarity.
	* Definition of “Parent”	Inserted: “Parent” may also mean “ <u>A minor who is emancipated under § 16.1-333 of the Code of Virginia.</u> ”  Inserted: “ <u>A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor’s</u> ”	Based on guidance from the Office of the Attorney General, and to ensure clarity regarding the issue, if a child with a disability is emancipated in accordance with state law, or if the minor child with a disability is married, they should be

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<u>marriage record, and thus, assume responsibilities of 'parent' under this chapter."</u>	permitted all rights and protections under IDEA, which are typically afforded to the parent of a child with a disability.
	* Definition of "Psychological services"	Inserted language to clarify that "psychological services" includes "consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, <u>direct observation</u> , and behavioral evaluations".	Language added to comply with the federal definition of the term.
	* Definition of "Related services"	Inserted language to clarify that "related services" includes " <u>early identification and assessment of disabilities in children</u> ".	Language added to comply with the federal definition of the term.
	* Definition of "Social work services in Schools"	Inserted: " <u>A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.</u> "	The definition in the proposed regulations mirrors the federal definition. In response to public comment, inserted language to clarify that in Virginia, school social workers may have a broader role.
	Definition of "Special education hearing officer"	The term has the same meaning as the term " <u>impartial</u> hearing officer" as that term is used in IDEA and its federal implementing regulations.	Added the word "impartial" to align with federal terminology.
	* Definition of "Specific Learning Disability"	Reinserted the term "emotional disabilities": "Specific learning disability does not include learning problems that are primarily the result of ...of intellectual disabilities; <u>of emotional disabilities</u> ; of environmental, cultural, or economic disadvantage.	The term was inadvertently deleted from the definition of "Specific Learning Disability" in the proposed regulations.
8 VAC 20-81-20	* Subsection 1. e. stated, "Are in special education and related services...."	"Are <del>in-receiving</del> special education and related services...."	As noted in public comments, special education and related services are services and not a location.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>Subsection 5 stated, “Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the local educational agency....”</p>	<p>Inserted language: “5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in <u>the areas served by</u> the local educational agency....”</p>	<p>Language inserted to comply with the federal regulatory requirements.</p>
	<p>* Subsection 7 stated, “Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met.”</p>	<p>Replaced subsection 7 with new language: “<u>Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools.</u>”</p>	<p>Language revised to comply with federal regulatory requirements.</p>
	<p>* Subsection 11 outlines VDOE’s responsibilities to ensure LEAs comply with state and federal laws and regulations regarding special education.</p>	<p>Revised 11 a to state, “a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, <del>processing requests for a hearing, appointment of</del> <u>evaluating</u> special education hearing officers, <u>and</u> management and monitoring of hearings, <del>and administration of the hearing system.</del>”</p>	<p>In response to public comments, the Supreme Court of Virginia will continue to administer the due process hearing system.</p>
	<p>* Subsection 23 outlines VDOE’s responsibilities relative to collecting Child Count data.</p>	<p>Revised language: “Report and certify annually to the United States Department of Education the number of children with disabilities...on <del>any a</del> <u>a</u> date between October 1 and December 1 of each year <u>determined by the Superintendent of Public Instruction or designee.</u>”</p>	<p>Based upon guidance from US DOE, revised the language to require that Child Count data be collected on a specific date each year. The Superintendent of Public Instruction or designee will determine the date, but it will be between October 1 and December 1 each year.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subsections 24 and 25 outline VDOE's responsibilities regarding overidentification and disproportionality.</p>	<p>Language was inserted into 24 a and 25:</p> <p>"24. Ensure that a practical method is developed and implemented... with respect to:</p> <p style="padding-left: 20px;">a. The identification of children as children with disabilities, including the identification of <u>children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability"; ...</u></p> <p>25. Ensure that in the <u>case of the determination of significant disproportionality, as outlined in subdivision 24 of this section</u>, the Virginia Department of Education shall:</p> <p style="padding-left: 20px;">a. <del>Reviews</del> <u>review</u> and, if appropriate, <del>revises</del> <u>provide for the revision of</u> the policies, procedures, and practices used by the local educational agency....</p> <p style="padding-left: 20px;">b. <del>Requires</del> <u>require</u>...</p> <p style="padding-left: 20px;">c. <del>Requires</del> <u>require</u>...</p>	<p>Based on guidance from US DOE, the language was modified to more closely align with federal regulatory requirements.</p>
	<p>Subsection 28 outlines VDOE's responsibilities regarding if it provides direct services to children with disabilities.</p>	<p>Revised 28 a: "The Virginia Department of Education <del>shall</del> <u>may</u> use payments that would otherwise have been available to a local educational agency <u>under Part B of the Act</u> to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of <del>§ 1413 (h) of the Act</del> <u>the excess cost requirements as outlined in 8 VAC 20-81-260.</u></p>	<p>This revision is made to align with federal regulatory requirements. Inadvertently, the correction was not included in the proposed regulations.</p>
<p>8 VAC 20-81-30</p>	<p>* N/A</p>	<p>Inserted a new provision in subsection C: "Every child with a disability is deemed to reside in a school division when:...7. <u>The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under</u></p>	<p>Based on guidance from the Office of the Attorney General, language was inserted to clarify which LEA is responsible for the provision of FAPE to a child with a disability who has been</p>

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		<p><u>§16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.</u></p>	<p>emancipated in accordance with the <i>Code of Virginia</i>.</p>
	<p>* In subdivisions E 3 through E 8, the proposed regulations outlined which LEA was responsible for the provision of FAPE to a child with a disability based on the child's residency. Each provision included an exception that if the child was placed in a state-operated program (SOP), the SOP was responsible for the provision of FAPE rather than the LEA of residence.</p>	<p>In subdivisions E 3 through E 8, deleted the phrases: "unless the child is in a state-operated program"; "unless the adult child with a disability is in a state-operated program"; and "unless the adult child is in a state operated program".</p>	<p>In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, the child's LEA of residence continues to be responsible for the provision of FAPE in the least restrictive environment.</p>
	<p>* Subdivision E 7: "7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."</p>	<p>Revised subdivision E 7: "7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, <del>the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program.</del> <u>The the adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.</u>"</p>	<p>As noted above, in response to public comments, the phrase "unless the adult child is in a state-operated program" was deleted.</p> <p>The additional revision was made to comply with the <i>Code of Virginia</i> and to mirror the current provision.</p>
	<p>* N/A</p>	<p>Inserted a new provision in subsection E: "<u>9. If placed in a sponsored residential home, licensed in accordance with 12VAC 35-105-10 et seq., the child is a resident of the division where the parent(s) reside.</u>"</p>	<p>The new provision was added to clarify which LEA is responsible for FAPE given this non-educational placement option is expanding in Virginia.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* "H. Each state-operated program shall ensure that children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education."</p>	<p>Revised the language in subsection H: "Each state-operated program shall ensure that <u>the requirements in this chapter are applied to children with disabilities, aged two to 21, inclusive, in that institution</u><del>have the right to a free appropriate public education.</del></p> <p>1. <u>For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.</u></p> <p>2. <u>The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.</u></p>	<p>In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, but who can be served in the LRE in the LEA of residence, the child's LEA of residence continues to be responsible for the provision of FAPE. The revision also outlines the SOPs responsibilities for these students.</p>
<p>8 VAC 20-81-40</p>	<p>* Subdivision A 2 stated, "b. Special education teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified."</p>	<p>Deleted language: "b. Special education teachers who are the teachers of record <del>for instructing one or more federal core subjects to students with disabilities</del> shall be highly qualified."</p>	<p>Based on guidance from US DOE, special education teachers must be highly qualified regardless of whether or not the teacher is providing instruction in one or more of the federal core subjects.</p>
	<p>* Subsection E outlined the requirements for Educational interpreting services.</p>	<p>The subsection was revised as follows:                      E. Educational interpreting services.                      1. The qualification requirements for personnel providing interpreting services <u>for children who are deaf or hard of hearing</u> are as follows:                      a. Personnel providing educational interpreting services for children using sign language shall:                      (1) have a <u>valid</u>...(VQAS) Level III, or                      (2) a passing score on the...</p>	<p>In response to public comment, revisions were made to the qualifications of educational interpreters to provide LEAs and educational interpreters with flexibility, while ensuring that children with disabilities are provided with quality interpreting services.</p>

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		<p>(EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state <u>qualification</u> or national certification (<del>National Interpreter Certification</del><u>excluding Certificate of Deaf Interpretation</u>) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. <del>Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.</del></p> <p>b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/<del>language</del> or hold a <u>national</u> Transliteration Skills Certificate from the...(TEC Unit) <u>or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</u></p> <p>c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics<del>and hold a national Oral Interpreter Credential (OIC).</del></p> <p><u>2. Personnel who provide interpreting services for children who use sign language or cued speech/ language and who do not hold the required qualifications may be employed in accordance with the following criteria:</u></p> <p>a. Personnel shall have a valid</p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or</u></p> <p><u>b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.</u></p> <p><u>3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:</u></p> <p><u>a. Personnel providing educational interpreting services for children using sign language shall hold</u></p> <p><u>(1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or</u></p> <p><u>(2) a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.</u></p> <p><u>(3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.</u></p> <p><u>(4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.</u></p> <p><u>b. Personnel providing</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</u></p> <p><u>(1)Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.</u></p> <p><u>(2)Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.</u></p> <p><u>c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.</u></p> <p><u>4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.</u></p>	
8 VAC 20-81-50	* Subdivision A 3 f: "f. The local school division shall consult with appropriate representatives of private	Revised subdivision A 3 f: "f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as	Upon guidance from US DOE, revisions made to comply with federal regulatory requirements.

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	<p>school children with disabilities, as well as home-instructed or home-tutored children with disabilities, on how to implement the child find and evaluation activities.”</p>	<p>home-instructed or home-tutored children with disabilities, <u>and representatives of parents of parentally-placed private school children with disabilities</u>, on how to implement the child find and evaluation activities.”</p>	
	<p>* D. Each school division shall have procedures to review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals.</p> <p>1. The local school division’s procedures shall ensure that if a child received early intervening services and/or other scientific research-based interventions, these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such procedures shall include:</p> <ul style="list-style-type: none"> <li>a. tracking and reviewing timelines;</li> <li>b. instructions on maintaining data-based documentation reflecting the child’s progress during instruction in the child’s area(s) of difficulty; and</li> <li>c. written progress reports to the child’s parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child’s learning, behavior, communication, or</li> </ul>	<p>D. <u>Referrals.</u></p> <p>1. Each school shall have procedures to <u>process in a timely manner all referral requests for a child suspected of having a disability.</u></p> <p>2. Each school shall have a <u>team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child’s educational and behavioral needs.</u></p> <ul style="list-style-type: none"> <li>a. <u>The team shall include:</u> <ul style="list-style-type: none"> <li>(1) <u>The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);</u></li> <li>(2) <u>The principal or designee;</u></li> <li>(3) <u>At least one teacher; and</u></li> <li>(4) <u>At least one specialist.</u></li> </ul> </li> <li>b. <u>Other members may be included according to the school division’s procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.</u></li> <li>c. <u>One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children’s educational needs.</u></li> </ul> <p>3. Children may be referred</p>	<p>In response to public comment, a framework for a school-based structure for referrals was reinserted, including timelines, required team members, and procedures for the referral process. However, the revisions continue to permit LEAs the flexibility to use scientific, response to intervention methods with procedural protections for the child suspected of having a disability intact.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>development.</p> <p>2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high-quality, research-based instruction in general education settings delivered by qualified personnel and data-based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.</p> <p>E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability.</p> <p>1. The local school division's procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</p> <p>2. If the school division decides not to evaluate, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</p>	<p><u>through a screening process, or by school staff, the parent(s), or other individuals.</u></p> <p><u>a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.</u></p> <p><u>b. If the referral is made to the special education administrator or designee, the administrator shall within 3 business days:</u></p> <p><u>(1) initiate the evaluation-eligibility process in accordance with 8VAC20-81-60; -70; -80;</u></p> <p><u>(2) require that the school-based team review and respond to the request; or</u></p> <p><u>(3) deny the request.</u></p> <p><u>(a) If the request is denied, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</u></p> <p><u>4. In reviewing the child's performance, the team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures.</u></p> <p><u>a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</u></p> <p><u>b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>administrator or designee for an evaluation to determine if the child needs special education and related services.</u></p> <p>5. <u>Timelines for Referral Process</u></p> <p>a. <u>The team shall meet within 10 business days following the receipt of the referral.</u></p> <p>b. <u>The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.</u></p> <p>c. <u>If the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing.</u></p> <p>6. <u>Actions by the team shall be documented in writing and shall include information upon which a decision was based.</u></p>	
<p>8 VAC 20-81-60</p>	<p>* Subsection A: 1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals.</p> <p>Subsection B: 1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the special education administrator, or designee, shall:</p>	<p>Revised subsection A:</p> <p>1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, <del>or</del> other individuals, <u>or a school-based team in accordance with 8VAC20-81-50 5.b. ...</u></p> <p>Insert new subdivision A 3:</p> <p><u>3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected o having a disability, from a source other than the school-based team, the special education administrator, or designee, shall:</u></p> <p><u>a. initiate the initial evaluation procedures under subsection B;</u></p>	<p>In response to public comment, a framework for a school-based structure for referrals was reinserted into 8 VAC 20-81-50. Language was changed in this section as a result of changes to 8 VAC 20-81-50.</p>

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		<p><u>b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.;</u>or</p> <p><u>c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170.</u></p> <p>Subsection B:</p> <p>1. <del>Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the</del> <u>The</u> special education administrator, or designee, shall:</p>	
	<p>* Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the evaluation process.”</p>	<p>Revised Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days <del>after the parent has provided written consent to the evaluation process</del> <u>of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action.</u>”</p>	<p>In response to significant public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee. In addition, for clarity, a timeline was inserted for the routing of a referral to the school-based team, outlined in 8 VAC 20-81-50.</p>
<p>8 VAC 20-81-70</p>	<p>The term “test”.</p>	<p>The term “test” was replaced with the term “assessment” throughout the section.</p>	<p>Revised to comply with federal regulatory language.</p>
	<p>* N/A</p>	<p>Inserted new provision B 1 b (4): “b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine: <u>...(4) Whether the child needs or continues to need special education and related services;....</u>”</p>	<p>Revised to comply with federal regulatory language.</p>
	<p>Subdivision F 5: “5. Requirements if additional data are not needed: a. If the team determines that no additional data are needed to determine</p>	<p>Deleted language as subdivision F 5, and inserted the same language as a new subdivision B 4.</p>	<p>The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding:</p> <ul style="list-style-type: none"> <li>(1) the determination and the reasons for it; and</li> <li>(2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.</li> </ul> <p>b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.</p> <p>c. The child's parent(s) has the right to resolve the issue through the dispute resolution options of mediation or due process, as described in this chapter.</p>		
	<p>* Subsection C:</p> <ul style="list-style-type: none"> <li>1. Tests and other evaluation materials used to assess a child under this chapter are selected and administered so as not to be discriminatory on a racial or cultural basis;</li> <li>2. Each assessment and other evaluation materials shall be provided and administered in the</li> </ul>	<p>Revised subsection C:</p> <ul style="list-style-type: none"> <li>1. <del>Tests</del> <u>Assessments</u> and other evaluation materials used to assess a child under this chapter are: <ul style="list-style-type: none"> <li>a. selected and administered so as not to be discriminatory on a racial or cultural basis;</li> <li>b. <del>Each assessment and other evaluation materials shall be</del> provided and administered in the</li> </ul> </li> </ul>	<p>Based on guidance from US DOE, the language in subsection C was revised to comply with federal regulatory requirements.</p>

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	<p>language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.</p> <p>...</p> <p>6. Any standardized tests that are given to a child:</p> <p>a. Have been validated for the specific purpose for which they are used; and</p> <p>b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.</p>	<p><u>child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;</u></p> <p><u>c. are used for the purposes for which the assessments or measures are valid and reliable;</u> <u>and</u></p> <p><u>d. are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.</u></p>	
	<p>* Subsection D: "A written copy of the evaluation report shall be provided at no cost to the parent(s). The report shall be available to the parent(s) no later than two business days before the meeting to determine eligibility."</p>	<p><del>"D. A written copy of the evaluation report shall be provided at no cost to the parent(s). The report evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility.</del></p> <p><u>1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.</u></p> <p><u>2. The evaluation report(s) shall be provided to the parent(s) at no cost.</u></p>	<p>In response to public comment, revisions were made to clarify each LEA's responsibilities relative to the provision of evaluation reports.</p>
	<p>Subdivisions F 3, F 4, and F 6:</p> <p>"3. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as</p>	<p>Replaced previous subdivision F 3 with the following:</p> <p><u>"The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section."</u></p> <p>Deleted subdivisions F 4 and F 6.</p>	<p>The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>appropriate follow the provisions of subsection B. of this section, in determining:</p> <ul style="list-style-type: none"> <li>a. whether the child continues to have a disability;</li> <li>b. the child's educational needs, including the present levels of academic achievement and related developmental needs of the child;</li> <li>c. whether the child continues to need special education and related services;</li> <li>d. whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general education curriculum.</li> </ul> <p>4. The local educational agency shall administer tests and other evaluation materials, in accordance with subsection B of this section, as may be needed to produce the data identified in subdivision 3. of this subsection.</p> <p>...</p> <p>6. This process is considered the evaluation if no additional data are needed.</p>		
	<p>* Subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the</p>	<p>Revised subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days <del>from the date of the parent's consent to</del> of the receipt of the</p>	<p>In response to strong public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of</p>

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	parent's consent to the evaluation."	<u>referral by the special education administrator or designee for the evaluation.</u> "	the receipt of the referral by the special education administrator or designee.
8 VAC 20-81-80	<p>Subsection C:                      "...If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."</p> <p>* Subdivision D 3 through D 5:</p> <p>"3. Observation.                      a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting, to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</p> <p>b. The local educational agency shall:                      (1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been</p>	<p>Revised subsection C:                      "...If a determination is made that a child has a disability and <del>needs</del> <u>requires</u> special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."</p> <p>Revised subdivision D 3 through D 5:</p> <p>"3. Observation.  <del>a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</del>  <u>a. The local educational agency shall:</u>                      (1) <del>Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</del>                      (2) <del>Ensure</del> <u>ensure</u> that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of</p>	<p>This section was substantially revised</p> <ul style="list-style-type: none"> <li>To comply with federal regulatory requirements;</li> <li>To comply with public comment; and</li> <li>To provide clarification.</li> </ul> <p>In addition, references to the DSM were deleted, and language, which previously implied that school personnel could "diagnose" children with disabilities, was removed.</p>

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	<p>obtained, consistent with the requirements of 8 VAC 20-81-170.</p> <p>(2) Ensure that the child is observed in the child’s learning environment (including the general education classroom setting) to document the child’s academic performance and behavior in the areas of difficulty.</p> <p>(3) Include information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation.</p> <p>4. A child shall not be determined to be eligible...if the child does not otherwise meet the eligibility criteria, and the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading...</p> <p>b. lack of appropriate instruction in math; or</p> <p>c. limited English proficiency.</p> <p>5. The documentation of the determination of eligibility shall include a statement of:...</p> <p>e. The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child’s age....</p> <p>f. For identification of learning disabilities, whether there are</p>	<p>difficulty.</p> <p><del>(3) Include information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation.</del></p> <p>b. The eligibility group, in determining whether a child is a child with a disability shall:</p> <p><u>(1) Use information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation; or</u></p> <p><u>(2) Have at least one member of the eligibility group conduct an observation of the child’s academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.</u></p> <p><u>c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</u></p> <p>4. A child shall not be determined to be eligible...if the child does not otherwise meet the eligibility criteria, <del>and</del> <u>or</u> the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading...</p> <p>b. lack of appropriate instruction in math; or</p> <p>c. limited English proficiency.</p> <p>5. <u>The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. The documentation of the determination of eligibility This documentation shall include a statement of:...</u></p> <p>e. The instructional strategies</p>	

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	<p>strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement or both relative to intellectual development in one or more of the areas listed in subsection K. of this section.”</p>	<p>used and the student-centered data collected if <u>the child has participated in</u> a response to scientific, research-based intervention process <del>was implemented and whether the child does not achieve commensurate with the child's age.</del> ...</p> <p>f. For identification of <u>a child with a specific learning disabilities disability, whether consistent with the requirements of subdivision T.2.a. and T.2.b. of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and</u></p> <p><u>(1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or]</u></p> <p><u>[(2) the child exhibits a pattern of</u> <del>there are</del> strengths and weaknesses in performance, <del>or</del> achievement, <del>or there are strengths and weaknesses in performance or achievement or both</del> relative to <u>age, Virginia-approved grade-level standards</u> <del>or]</del> intellectual development <del>in one or more of the areas listed in subsection K of this section.</del></p> <p><u>g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T.2.c. of this section.”</u></p>	
	<p>* Subsections H and I:                      “H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the</p>	<p>Revised subsections H and I:                      “H. <del>The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.</del></p>	

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	<p>child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group.</p> <p>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability."</p>	<p><del>For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group.</del></p> <p><u>H. For all children suspected of having a disability, local educational agencies shall:</u></p> <ol style="list-style-type: none"> <li><u>1. use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and</u></li> <li><u>2. have documented evidence that by reason of the disability, the child needs special education and related services.</u></li> </ol> <p><del>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability.</del></p>	
	<p>* Subsections L through S:</p> <p>Outlined eligibility criteria for each of the following eligibility categories:</p> <ul style="list-style-type: none"> <li>• Autism</li> <li>• Deafness</li> <li>• Developmental Delay</li> <li>• Hearing Impairment</li> <li>• Intellectual Disability</li> <li>• Other Health Impairment</li> <li>• Specific Learning Disability</li> <li>• Speech-Language Impairment</li> <li>• Visual Impairment</li> </ul>	<p>Revised subsections J through W:</p> <p>Substantially redrafted eligibility criteria for each of the previously drafted categories, and inserted new criteria for each of the following:</p> <ul style="list-style-type: none"> <li>• Deaf-Blindness</li> <li>• Emotional Disability</li> <li>• Multiple Disabilities</li> <li>• Orthopedic Impairment</li> <li>• Traumatic Brain Injury</li> </ul>	
8 VAC 20-81-90	* A. A local educational agency shall evaluate a child with a disability in	A. <u>Termination of a child's eligibility for special education and related</u>	In response to significant public comment, all Virginia-specific parental

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	<p>accordance with 8 VAC 20-81-70 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.</p> <p>B. The IEP Team shall terminate the child's eligibility for special education and related services in the following areas:</p> <ol style="list-style-type: none"> <li>1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services.</li> <li>2. A related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team making the determination shall include local educational agency personnel representing the specific related services discipline being terminated.</li> <li>3. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8 VAC 20-81-170 C., but parental consent is not required.</li> </ol>	<p><u>services shall be determined by an eligibility group.</u></p> <ol style="list-style-type: none"> <li>1. <u>Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.</u></li> <li>2. <u>A-The local educational agency shall evaluate a child with a disability...</u></li> <li>3. <u>Evaluation is not required...</u></li> </ol> <p><u>B. The IEP team shall terminate the child's eligibility for special education and related services in the following areas:</u></p> <ol style="list-style-type: none"> <li>1. <u>Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services.</u></li> <li>2. <u>A a related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services.</u></li> </ol> <ol style="list-style-type: none"> <li>1. <u>The IEP team making the shall make this determination shall include local educational agency personnel representing the specific related services discipline being terminated based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.</u></li> </ol> <p><u>C. Written parental consent shall be required prior to any partial or complete termination of services.</u></p> <p><u>D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C, but parental consent is not required.</u></p> <p><u>E. If the parent(s) revokes consent</u></p>	<p>consent provisions which were removed in the proposed regulations have been reinserted, including parental consent for the partial or complete termination of special education and related services.</p>

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	C. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility....	for the child to continue to receive special education and related services, the local educational agency shall follow the <u>eligibility</u> procedures in 8VAC20-81-80 to terminate the child's eligibility...	
8 VAC 20-81-100	Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the age of eligibility requirements in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency."	Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the <u>definition of "age of eligibility" requirements as outlined</u> in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency."	Revisions made in response to public comment and to clarify that the change is not related to the definition of "Developmental Delay." Rather, the change is intended to prevent restating information in the definition of "Age of Eligibility."
	N/A	Inserted into Subsection H a cross-reference to 8 VAC 20-81-130 A 2.	Revisions made in response to public comment.
	* Subdivision I 4: "4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education services in compliance with subdivision 3. of this subsection."	Revised subdivision I 4: "4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education services in compliance with <del>subdivision 3.</del> of this subsection."	Revision made to comply with the federal regulatory requirement.
	* Subsection L outlines requirements regarding "Length of School Day".	At the end of Subsection L, inserted new sentence which states, "For preschool-aged children with disabilities, the IEP team determines the length of the school day."	This long-standing VDOE interpretation was inserted for clarity.
	Subdivision M 1: VDOE "may use whatever state, local, federal, and private sources of support are available...."	Revised subdivision M 1: VDOE "may use whatever state, local, federal, and private sources of support <u>that are available....</u> "	Word inserted to mirror federal regulatory language.
8 VAC 20-	* Subdivision B 2 d	Revised subdivision B 2 d:	The revision was made in

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81-110	required that each LEA ensure that an IEP “d. Is implemented as soon as possible following parental consent to the IEP not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.”	“d. Is implemented as soon as possible following parental consent to the IEP, <del>not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.</del>	response to public comment. The revised provision mirrors Virginia’s current regulatory requirement.
	* Subdivision B 7: “This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives....”	Deleted the subdivision.	Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.
	* Subdivision B 8 a: “If the local educational agency considers the parent’s request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent’s request and provide the parent information on this chapter’s dispute resolution options.”	Deleted the subdivision.	Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.
	* Subdivision C 4 regarding Part C transition participants: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s’) request, invite the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.”	Revised subdivision C 4: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s’) request, invite the Part C service coordinator or other representatives of the Part C system <u>to the initial IEP meeting</u> to assist with the smooth transition of services.”	Revisions made to clarify federal regulatory requirements.
	Subdivision E 2:	Revised subdivision E 2:	Cross-references

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	<p>a (3) "Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child."</p> <p>b (1) "For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system."</p>	<p>a (3) "Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child <u>under subdivision C.1.f. of this section.</u>"</p> <p>b (1) "For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system <u>under subdivision C.4. of this section.</u>"</p>	<p>inserted for clarification.</p>
	<p>* Subdivision E 4 b: "4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence sent to the parent(s) and any responses received; or</p>	<p>Revised subdivision E 4 b: "4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence (<u>written, electronic, or facsimile</u>) sent to the parent(s) and any responses received; or</p>	<p>In response to public comment, language inserted for clarification.</p>
	<p>Subdivision E 6 outlined provisions regarding audio and video recordings of IEP meetings.</p>	<p>Entire subdivision deleted from this section and reinserted at to 8 VAC 20-81-170 J.</p>	<p>In response to public comments, expanded the provision to apply to eligibility meetings and manifestation determination review meetings, as well as IEP meetings. As revised, the provisions were more properly placed in the Procedural Safeguards section.</p>
	<p>* Subdivision E 7: "7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting."</p>	<p>Subdivision E 7: "7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, <u>or within a reasonable period of time after the IEP meeting, not to exceed but no later than 10 calendar days from the date of the IEP meeting.</u></p>	<p>Revisions made in response to public comments.</p>
	<p>* N/A</p>	<p>Inserted new subdivision in F 2:</p>	<p>Revised these sections in</p>

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		<p>2. The IEP team also shall: ...</p> <p>d. Consider the communication needs of the child;</p> <p>e. <u>Consider the child's need for benchmarks or short-term objectives;</u></p> <p>e-f. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, ...; and</p> <p>f-g. Consider whether the child requires assistive technology devices and services.</p>	<p>response to public comments to emphasize that during the development of each child's IEP, regardless of whether or not the child is participating in Virginia Alternate Assessment Program, the IEP team must consider whether or not the child requires benchmarks or short-term objectives in order to receive FAPE. The IEP team's consideration must also be documented.</p>
	<p>* Subdivision G 3 regarding the content of an IEP:                      "3. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.                      a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.</p>	<p>Subdivision G 3:                      "3. <u>If determined appropriate by the IEP team as outlined in F 2 of this section, a description of benchmarks or short-term objectives.</u> For children with disabilities who take alternate assessments aligned to alternate achievement standards, <u>the IEP shall include a description of benchmarks or short-term objectives.</u>  <del>a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.</del>                      a. <u>The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives.</u></p>	
	<p>* Subdivision G 4 regarding the content of an IEP:                      "4. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the</p>	<p>Revised subdivision G 4 regarding the content of an IEP:                      "4. A statement of the special education and related services and supplementary aids and services, <u>based on peer-reviewed research to the extent practicable,</u> to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to <u>enable</u> the child:"</p>	<p>Language was inadvertently omitted from the proposed regulations, and reinserted to comply with federal regulatory provisions.</p>

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	<p>child:"</p> <p>* Subdivision G 6 regarding the content of an IEP:</p> <p>"a. A statement of any individual accommodations or modifications that are necessary...</p> <p>b. If the IEP team determines that the child will not participate in a particular state assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child;</p> <p>(2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's....</p> <p>c. A statement that the child shall participate in either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;</p> <p>d. A statement of any individual accommodations or modifications...;</p> <p>e. If the IEP team determines that the child will not participate in a particular divisionwide assessment of student achievement (or part of an assessment), a statement</p>	<p>Revised subdivision G 6:</p> <p>"a. A statement of any individual <u>appropriate</u> accommodations or modifications that are necessary...</p> <p>b. If the IEP team determines that the child <del>will not participate in</del> <u>must take an alternate assessment instead of</u> a particular state assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) <del>Why that assessment is not appropriate for the child</del> <u>the child cannot participate in the regular assessment;</u></p> <p>(2) <del>How the child will be assessed, including participation in the alternate assessment for those students who meet</del> <u>Why the particular assessment selected is appropriate for the child, including that the child meets</u> the criteria for the alternate assessment; and</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p> <p>c. A statement that the child shall participate in either <del>the</del> <u>a</u> state assessment for all children that is part of the state assessment program or the state's alternate assessment;</p> <p>d. A statement of any individual <u>appropriate</u> accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;</p> <p>e. If the IEP team determines that the child <del>will not participate in</del> <u>must take an alternate assessment</u></p>	<p>Word inserted into subdivision G 6 a to comply with federal regulatory requirements.</p> <p>Revisions to G 6 b through G 6 e were made to comply with federal regulatory requirements.</p>

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	<p>of:                      (1) Why that assessment is not appropriate for the child;                      (2) How the child will be assessed;                      (3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p>	<p><del>instead of</del> a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:                      (1) Why <del>that assessment is not appropriate for the child</del> <u>the child cannot participate in the regular assessment</u>;                      (2) <del>How the child will be assessed</del> <u>Why the particular alternate assessment selected is appropriate for the child</u>; and                      (3) How the child's nonparticipation in the assessment will impact the child's                      ....</p>	
	<p>* Subdivision G 7:                      7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.</p>	<p>Deleted the last sentence in subdivision G 7:                      "7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. <del>Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.</del>"</p>	<p>Sentence deleted to comply with applicable case law.</p>
	<p>* Subdivision G 8 b:                      "b. When periodic reports on the progress the child is making toward meeting the goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards."</p>	<p>Revised subdivision G 8 b:                      "b. When periodic reports on the progress the child is making toward meeting the <u>annual goals</u> will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, <u>and at least as often as parents are informed of the progress of their children without disabilities.</u>"</p>	<p>As a result of significant public comment, language was inserted for clarity. The new language reflects the current Virginia regulatory requirement.</p>
	<p>* Subdivision G 10:                      "10. Secondary transition services.                      a. Prior to the child entering secondary school but beginning not later than the first IEP to be in effect when the child turns 14, or younger if</p>	<p>Revised subdivision G 10:                      "10. Secondary transition services.                      a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually <u>thereafter</u>, the IEP shall</p>	<p>In response to public comment, secondary transition services will begin at age 14, rather than age 16. However, the language was revised to clarify the difference regarding the LEA's responsibilities for</p>

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	<p>determined appropriate by the IEP team, and updated annually, the IEP shall include:</p> <p>(1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;</p> <p>(2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and</p> <p>(3) A statement, if appropriate, of interagency responsibilities or any needed linkages.</p> <p>b. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.</p> <p>c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."</p>	<p>include <u>age-appropriate</u>:</p> <p>(1) <del>Appropriate</del> measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; <u>and</u></p> <p>(2) <del>The</del> transition services, including courses of study (<del>such as participation in advanced-placement course or career and technical education program</del>), needed to assist the child in reaching those goals. <u>Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.</u></p> <p><u>b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements in subdivision 10.a. of this subsection, the IEP shall also include</u> <del>(3)</del> <u>A</u> a statement, if appropriate, of interagency responsibilities or any linkages.</p> <p><del>b.c.</del> For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.</p> <p><del>c.</del> <u>Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."</u></p>	<p>providing transition services to a child with a disability at age 14 versus age 16.</p>
	<p>* Subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement</p>	<p>Revised subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student <u>and parent(s) has have</u></p>	<p>Revised in response to public comment.</p>

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	that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority.”	been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority.”	
8 VAC 20-81-120	<p>* Subdivisions A 2 through A 4:</p> <p>“2. The new local educational agency shall provide a free appropriate public education to the child, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency, until the new local educational agency either:</p> <p>a. adopts the child’s IEP from the previous local educational agency; or</p> <p>b. conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this chapter.</p> <p>3. The local educational agency may develop and implement an interim IEP while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.</p> <p>a. The parent(s) or local educational agency may</p>	<p>Revised subdivisions A 2 through A 4:</p> <p>“2. The new local educational agency shall provide a free appropriate public education to the child, <u>including ensuring that the child has available special education and related services</u>, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency, until the new local educational agency either:</p> <p>a. <u>Adopts and implements the child’s IEP from the previous local educational agency with the parent’s consent</u>; or</p> <p>b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP <u>with the parent’s consent</u> that meets the requirements in this chapter.</p> <p>3. The <u>new</u> local educational agency may develop and implement an interim IEP <u>with the parent’s consent</u> while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. <u>If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, if the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency. The</u> <u>the</u> parent(s) or local</p>	<p>In response to public comment, reinserted all Virginia-specific parental consent requirements, including those relative to children with disabilities who transfer.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>initiate the dispute resolution options of mediation or due process to resolve the dispute.”</p> <p>* Subsection C: “C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter. During the evaluation period, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.”</p>	<p>educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. <u>During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.</u>”</p> <p>Revised subsection C: C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.</p> <p><u>1. During the evaluation period, child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.</u></p> <p><u>2. <del>the</del> The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter. <del>provide FAPE in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.</del></u></p>	
8 VAC 20-80-130	<p>Subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities....”</p> <p>Subdivision B 1: “1. Each local educational</p>	<p>Revised subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, <u>aged two to 21, inclusive,</u> including those in public or private institutions or other care facilities, are educated with children without disabilities....”</p> <p>Subdivision B 1: “1. Each local educational agency shall ensure that a continuum of</p>	<p>Revisions were made in response to public comment to:</p> <ul style="list-style-type: none"> <li>• clarify that the provisions regarding LRE apply to preschool students;</li> <li>• link the requirements regarding the provision of</li> </ul>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.”	alternative placements is available to meet the needs of children with disabilities, <u>aged two to 21, inclusive</u> , for special education and related services.”	supplementary aids and services in nonacademic settings, which appears in the FAPE section, to similar requirements which appear in this section; and  • reinsert the continuum of alternative placements. This language had been moved to the definition of “special education,” but was reinserted for clarity.
N/A		Inserted cross-reference to 8 VAC 20-81-100 H. in 8 VAC 20-81-130 A 2.	
	Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10....	Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, <u>including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions....</u>	
8 VAC 20-80-150	Subdivision C 1: 1. Definitions applicable to this subsection.	Revised subdivision C 1: 1. <del>Definitions applicable to this subsection</del> <u>The following definitions are applicable for purposes of this subsection.</u>	Revisions were made to clarify that these definitions apply for purposes of these regulations only.
	* Subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools on how to carry out the child find activities....”	Revised subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools <u>and representatives of parents of parentally-placed private schools children with disabilities</u> on how to carry out the child find activities....”	In response to guidance from US DOE, revisions were made to ensure compliance with federal regulatory requirements.
	* Subdivision C 4 c: “c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year....”	Revised subdivision C 4 c: “c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted <del>by December 1 of each year</del> <u>on a date between October 1 and December 1 of each year, as determined by the Superintendent of Public Instruction or designee....</u> ”	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subdivision C 5 a (5): (5) How and when those decisions will be made.</p>	<p>Revised subdivision C 5 a (5): (5) How and when those decisions will be made, <u>including how parents, teachers and private school officials will be informed of the process.</u></p>	
<p>8 VAC 20-80-160</p>	<p>* Subsection A: “General. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency’s disciplinary policies and procedures. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.”</p>	<p>Divided proposed subsection A into subdivisions A 1 and A 3; and inserted new provisions A 2, A 3 a, and A 3 b: <u>“2. In the event that the child’s behavior impedes the child’s learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:</u>  <u>a. developing goals and services specific to the child’s behavioral needs, or</u>  <u>b. conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child’s behavioral needs.”</u>  3. School personnel may consider any unique circumstances....  <u>a. In reviewing the disciplinary incident, school personnel may review the child’s IEP and any behavioral intervention plan, and/or consult with the child’s teacher(s) to provide further guidance in considering any unique circumstances related to the incident.</u>  <u>b. School personnel may convene an IEP team for this purpose.</u></p>	<p>In response to public comments, inserted additional language regarding functional behavioral assessments (FBAs) and behavioral intervention plans (BIP) for clarity and to assist school administrators in making decisions regarding disciplinary incidents based on the child’s unique circumstances.</p> <p>Inserted additional language to assist parents and school administrators in understanding procedural protections for parents who disagree with an evaluation obtained by the LEA as part of the FBA process.</p>
	<p>* N/A</p>	<p>Inserted new subdivisions in D 6 a: <u>“(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>IEP team.</u></p> <p><u>(2) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B. if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or”</u></p>	
	<p>* Subdivision C 5 regarding “Special Circumstances”:</p> <p>“a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>b. The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>c. For purposes of this</p>	<p>Revised subdivision C 5:</p> <p>“a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school, <u>on school premises, or at</u> a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, <u>on school premises, or at</u> a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p><del>b</del>(3). The child inflicts seriously bodily injury upon another person at school, <u>on school premises, or at</u> a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p><del>eb</del>. For purposes of this part, ‘weapon,’ ‘controlled substance; and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</p>	<p>Based upon guidance from US DOE, revised the language to comply with federal regulatory requirements.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	part, 'weapon,' 'controlled substance,' and 'serious bodily injury' have the meaning given the terms under 8VAC20-81-10."		
	* Subdivision F 1: "A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child's behavior is likely to result in injury to self or others."	Revised subdivision F 1: "A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child's behavior is <u>substantially</u> likely to result in injury to self or others."	The word was inadvertently omitted from the proposed regulations, and was inserted based on public comments, and to comply with federal regulatory requirements.
8 VAC 20-81-170	Subdivision B 3 a indicated that parent-initiate evaluations "Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and"	Revised subdivision B 3 a: "Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding <u>the provision of a free appropriate public education for</u> to the child; and"	Language was revised for clarity.
	Subdivision D 1 e: "e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement.	Revised subdivision D 1 e: "e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement <u>because of a violation of a code of student conduct.</u>	Language inserted for clarity.
	* Subsection E regarding parental consent.	Reinserted Virginia-specific requirements that parental consent must be obtained before any partial or complete termination of special education and related services, and prior to the provision of a free appropriate public education to children with disabilities who transfer.	In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.
	* Subdivision E 2 d indicated parental consent is not required before the "Administration of a test or other evaluation that is used to measure progress on the child's IEP goals;"	Revised subdivision E 2 d: Administration of a test or other evaluation that is used to measure progress on the child's IEP goals <u>and is included in the child's IEP;</u> "	Inserted language was inadvertently omitted from the proposed regulations and was reinserted for clarity.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subdivision E 8 b:                      “8. To meet the reasonable measures requirement of this section, ...                      b. Copies of correspondence sent to the parent(s) and any responses received; and”</p>	<p>Revised subdivision E 8 b:                      “8. To meet the reasonable measures requirement of this section, ...                      b. Copies of correspondence (<u>written, electronic, or facsimile</u>) sent to the parent(s) and any responses received; and</p>	<p>In response to public comment, language inserted for clarity.</p>
	<p>* Subdivision G 1 c:                      “A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.”</p>	<p>Subdivision G 1 c:                      “A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been <del>advised</del> <u>provided a copy of a judicial order or decree, or other legally-binding documentation</u>, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.”</p>	<p>The proposed language mirrored the federal regulatory requirement. However, based on public comment, revised language to provide clarity and to ensure that non-custodial parents receive appropriate procedural protections.</p>
	<p>* N/A</p>	<p>Inserted new subdivision G 5 c:                      “c. <u>A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E.7.</u>”</p>	<p>Language inserted to comply with federal regulatory requirements.</p>
	<p>* N/A</p>	<p>Inserted new language in subdivision G 9 regarding hearing procedures:                      “<u>a. The local educational agency may:</u>                      (1) <u>develop local procedures for such a hearing process; or</u>                      (2) <u>obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 G.</u>”</p>	<p>Language inserted for clarity.</p>
	<p>* N/A</p>	<p>Inserted new subdivision G 11 b:                      “<u>b. Each local educational agency shall ensure that electronic</u></p>	<p>Language inserted in response to public comments.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record."</u></p>	
	<p>* N/A</p>	<p>Deleted language from proposed 8 VAC 20-81-110 E 6, and reinserted into new subsection J. in this section.</p> <p>In addition, modified language, as outlined below:                      "J. Audio and video recording.</p> <p>1. The local educational agency shall permit the use of audio recording devices at <del>IEP</del> meetings <u>convened to determine a child's eligibility under 8VAC20-81-80, to develop, review, or revise the child's IEP under 8VAC20-81-110 F., and to review discipline matters under 8VAC20-81-160 E.</u> The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. ...</p> <p>2. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:</p> <p>a. video recording devices at <del>IEP</del> meetings <u>convened pursuant to this chapter</u>; or</p> <p>b. Audio or video recording devices at meetings other than <u>those meetings that are identified in subdivision 1 of this subsection for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.</u></p> <p>3. These policies shall: ...</p>	<p>In response to public comments, revised these provisions to apply to eligibility meetings and manifestation determination review meetings, as well as IEP meetings. Given the expanded scope of the provisions, they were moved from the section regarding IEPs to the section on Procedural Safeguards.</p>
8 VAC 20-	* Subdivision B 2:	Revised subdivision B 2:	Revisions were made in

Section number	Requirement at proposed stage	What has changed	Rationale for change
80-180	2. The local educational agency shall include a statement on the IEP...that the student has been informed of the rights that will transfer to the student on reaching the age of 18.	2. The local educational agency shall include a statement on the IEP...that the student <del>and</del> <u>parent(s) has</u> have been informed of the rights that will transfer to the student on reaching the age of 18.	response to public comments.
8 VAC 20-81-190	* Subsection A: Requires that each LEA inform parents “of the option of mediation to resolve disputes involving the identification, evaluation of the child, or educational placement and services of the child or the provision of a free appropriate public education to the child, including matters arising prior to the filing of a state complaint or request for a due process hearing.”	Revised subsection A: Requires that each LEA inform parents “of the option of mediation to resolve disputes involving <u>any matter arising under Part B of the Act, including</u> the identification, evaluation <del>of the child</del> , or educational placement and services of the child, <del>or</del> the provision of a free appropriate public education to the child, <del>including and</del> matters arising prior to the filing of a state complaint or request for a due process hearing.”	Based on guidance from US DOE, language was inserted to clarify the exact language of the federal statute and regulations.
	Subdivision F 1: “An individual who serves as a mediator:  1. May not be an employee of any local educational agency or the Virginia Department of Education if the Virginia Department of Education is providing direct services to a child...”	Revised subdivision F 1: “An individual who serves as a mediator:  1. May not be an employee of any local educational agency or the Virginia Department of Education if <del>the Virginia Department of Education</del> <u>it</u> is providing direct services to a child...”	Language was changed for clarity.
8 VAC 20-81-200	Subdivision D 1 b: “The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60 day regulatory timeline.”	Revised subdivision D 1 b: “The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay <del>completing completion of the</del> investigation within <del>the 60 day regulatory timeline</del> <u>60 calendar days</u> .”	Language was changed for clarity.
8 VAC 20-81-210	Subsection A: “The Virginia Department	Revised subsection A: “The Virginia Department of	Language was changed for clarity.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>of Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:"</p>	<p>Education <del>administers a</del> <u>provides for an impartial</u> special education due process hearing system to resolve disputes between parents and local educational agencies regarding the."</p>	
	<p>* Throughout the section, the proposed regulations indicated that responsibility for the implementation of the due process hearing system would be shifted exclusively to VDOE, rather than the responsibility being shared, in part, with the Supreme Court of Virginia.</p>	<p>Throughout the section language was changed to note that the Supreme Court of Virginia continues to maintain certain responsibilities, rather than shifting those responsibilities to the Virginia Department of Education.</p>	<p>Based on significant public comment and to avoid even the appearance of impropriety, the Supreme Court of Virginia will continue to be responsible for the administration of the due process system, including recruitment, selection, and appointment of special education hearing officers, and applicable training. Therefore, all provisions regarding VDOE's administration of the due process system were deleted.</p>
	<p>* N/A</p>	<p>Insert new subsection B: "B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia."</p>	
	<p>* Subdivisions B 1 through B 3 indicated that VDOE would establish procedures for the following: Recruitment, selection, and appointment of Special Education Hearing Officers; providing Special Education Hearing Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; and evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers.</p>	<p>Deleted subdivisions B 1 through B 3. Inserted new subsection C: <u>"The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity."</u></p> <p>Inserted new subdivisions D 1 through D 3., which indicate that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training regarding applicable laws and regulations</p>	<p>Based on guidance from the Office of the Attorney General, language regarding VDOE's certification process for Special Education Hearing Officers was inserted.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Subdivision C 3 also outlines factors relative to a Special Education Hearing Officer's recertification process.</p> <p>Proposed subdivision B 4 has been retained as C 4.</p>	
	<p>* Subdivision D 1: "A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education."</p>	<p>Subdivision F 1: "A request for a hearing shall be made in writing to the local educational agency and to the Virginia Department of Education. <u>A copy of that request shall be delivered contemporaneously by the requesting party to the other party.</u>"</p>	<p>Based on public comments, revisions were made to require that regardless of which party files a due process request, the request must be made in writing, and provided contemporaneously to both VDOE and the other party.</p>
	<p>* Subdivision D 6: "6. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed as described in subdivision 2. of this subsection. a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s)'"</p>	<p>Subdivision F 6: "<del>6. The party requesting the due process hearing shall not be allowed</del> <u>The special education hearing officer has the discretionary authority to permit either party</u> to raise issues at the <del>due process hearing that were not raised in the notice filed as described in subdivision 2. of this subsection by the party requesting the due process hearing in light of particular facts and circumstances of the case.</del> <del>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s)'"</del></p>	<p>Although the proposed provision mirrored federal regulatory requirements, based on significant public comment and to ensure fairness, revisions were made to grant special education hearing officers the authority to permit either party, not just the local educational agency, to raise issues at the hearing that were not raised in the due process notice.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	request for due process in light of particular facts and circumstances of the case.	<del>request for due process in light of particular facts and circumstances of the case.</del>	
	Subdivision I 3: b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).	Subdivision K 3: “b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), <u>even though the applicable appeal period has expired.</u> ”	Language inserted for clarification.
	* N/A	<p>Inserted new provision L 6: “6. <u>Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated.</u>”</p> <p>Inserted new provision N 16: “<u>Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s) within 45 calendar days of the hearing officer’s decision in hearings that have been fully adjudicated.</u></p> <p><u>a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.</u></p> <p><u>b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer’s decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.</u></p> <p><u>c. The implementation plan:</u></p>	Based on public comment, the role of implementation plans were reinserted to ensure that LEAs comply with hearing officers’ decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or the withdrawal of the due process request.

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		<p><u>(1) must be based upon the decision of the hearing officer.</u></p> <p><u>(2) shall include the revised IEP If the decision affects the child's educational program.</u></p> <p><u>(3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.</u></p>	
	<p>* Subdivision L 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of the hearing;"</p>	<p>Subdivision N 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of <del>the</del> <u>a fair and impartial</u> hearing;"</p>	<p>The language was inadvertently omitted from the proposed language.</p>
	<p>* N/A</p>	<p>Inserted new provision O 5 b: At the prehearing stage "<u>b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute</u>".</p>	<p>Inserted language based on public comment to ensure uninterrupted and consistent proceedings.</p>
	<p>* Subdivision M 14: "Report findings of fact and decisions in writing to the parties but if a party is represented by an attorney, then to their attorney and the Virginia Department of Education."</p>	<p>Subdivision O 14: "Report findings of fact and decisions in writing to the parties <del>but if a party is represented by an attorney, then to their attorney</del> and their attorneys and the Virginia Department of Education."</p>	<p>Revisions were made in response to public comments.</p>
	<p>* Subdivision N 3 b: "The special education hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held."</p>	<p>Subdivision P 3 b: "The special education hearing officer <u>or a party</u> may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held."</p>	<p>Language inserted for clarity.</p>
	<p>* N/A</p>	<p>Inserted new Q 1 e: "<u>The parties may enter into a confidentiality agreement as part of their resolution agreement. There is</u></p>	<p>Language inserted for clarity.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting."</u></p>	
	<p>* Subdivision O 2 d: "If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent), ...."</p>	<p>Subdivision Q 2 d: "If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable "efforts have been made (and documented <del>as required to gain parental consent</del> <u>in accordance with the provision in 8VAC20-81-110 E 4),...."</u></p>	<p>In response to public comments and guidance from US DOE, revisions were made to clarify the LEA's responsibility to document efforts to obtain parental participation in a resolution session.</p>
	<p>* N/A</p>	<p>Inserted new R 2 c: "The resolution period is part of, and not separate from, the expedited due process hearing timeline."</p>	<p>Language inserted for clarity.</p>
	<p>* Subdivision Q 1: "1. The costs of an independent educational evaluation, Special Education Hearing Officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party."</p>	<p>Subdivision S 1: "1. The costs of an independent educational evaluation <u>ordered by the special education hearing officer</u>, Special Education Hearing Officer, court reporters, and transcripts <del>that are incidental to the hearing</del> are shared equally by the local educational agency and the Virginia Department of Education. <del>Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party."</del></p>	<p>Based on guidance from US DOE, revised language to clarify if the parent disagrees with the evaluation completed by the LEA, the parent is entitled to an IEE at public expense.</p>
<p>8 VAC 20-81-220</p>	<p>* Subdivision B 1 a: "The biological parent(s) are allowing relatives...to act as a parent;"</p>	<p>Revised subdivision B 1 a: "The <del>biological</del> parent(s) are allowing relatives...to act as a parent;"</p>	<p>The provision applies to all individuals meeting the definition of "parent," not just "biological parent."</p>
	<p>* Subdivision B 2: "The local educational agency shall appoint a surrogate parent for a child, aged two to 21,</p>	<p>Subdivision B 2: "<u>Unless one of the exceptions outlined in subdivision B.1. of this section applies,</u> <del>The</del> the local educational agency shall appoint a</p>	<p>In response to public comment, revised language to indicate that if a child with a disability is either an</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	inclusive, who is suspected of having or determined to have a disability when: a. No parent,...can be identified; b. The local educational agency...cannot discover the whereabouts of a parent; c. The child is a ward of the state; or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia.”	surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent, as defined in 8VAC20-81-10, can be identified; b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent; c. The child is a ward of the state <u>and either subdivision 1.a. or 1.b. of this subsection is also met</u> ; or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia <u>and either subdivision 1.a. or 1.b. of this subsection is met.</u>	unaccompanied homeless youth or a ward of the state, a surrogate parent only needs to be appointed if no one meeting the definition of “parent” can be identified or the LEA cannot discover the whereabouts of a parent.
	Subdivisions B 5 through B 7.	Reorganized provisions in a new subsection as C 1 through C 3.	Revisions made for clarity.
	* Subdivision B 5: “The local educational agency shall establish procedures for determining whether a child needs a surrogate parent.”	Subdivision C 1: “The local educational agency shall establish procedures <u>in accordance with the requirements of this chapter</u> , for determining whether a child needs a surrogate parent.”	In response to public comment inserted clarifying language.
	* Subdivision B 7 b outlined that a surrogate parent’s appointment may be terminated if: “The child is found no longer eligible for special education services;”	Subdivision C 3 b outlines that a surrogate parent’s appointment may be terminated if: “The child is found no longer eligible for special education services <u>and the surrogate parent has consented to the termination of services</u> ;”	In response to public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.
	* Subdivision C 2 c indicated that during the appointment of a surrogate parent, there should be “Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child;”	Subdivision D 2: Deleted the language previously included in C 2 c.	Based on guidance from US DOE, the language was deleted.
8 VAC 20-81-230	* Subdivision B 1 d: “A copy of the local school	Revised subdivision B 1 d: “ <del>A copy of</del> Any revisions to the	Revisions made to limit unnecessary paperwork

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>division's interagency agreement regarding the provision of special education and related services in a regional or local jail....”</p> <p>* Subdivision G 2: “A copy of this agreement shall be submitted with the annual plan specified in subsection B of this section.”</p>	<p>local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....”</p> <p>Subdivision G 2: “A copy of <u>any revisions to</u> this agreement shall be submitted with the annual plan specified in subsection B of this section.”</p>	<p>and to comply with current practice regarding the submission of a LEA’s Annual Plan.</p>
	<p>* Subdivision D 1 regarding membership in local advisory committees: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. The committee shall include representation of gender and the ethnic population of the local school division.”</p>	<p>Revised subdivision D 1: “a. A majority of the committee shall be parents of children with disabilities. b. <u>The committee shall include one teacher. The committee shall include representation of gender and the ethnic population of the local school division.</u> c. <u>Additional local school division personnel shall serve only as consultants to the committee.</u>”</p>	<p>Revisions were made in response to significant public comment. The requirement for school divisions to have a LAC was retained. However, revisions were made to ensure LACs could continue to be effective, while limiting the role of LEA personnel to remove the appearance of impropriety.</p>
	<p>* Subdivision F 2: “The local school division shall participate in transition planning conferences...in accordance with 34 CFR § 303.148(b).”</p>	<p>Revised subdivision F2: “The local school division shall participate in transition planning conferences...in accordance with <u>34 CFR § 303.148(b) §1437(a)(9) of the Act, and its federal implementing regulations.</u>”</p>	<p>Revisions were made based upon guidance from US DOE.</p>
<p>8 VAC 20-81-250</p>	<p>* Subsection C: 1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the Virginia Board of Education. 2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.</p>	<p>Revised Subsection C: 1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the <u>Virginia Board of Education Superintendent of Public Instruction or designee.</u> 2. Such reimbursement shall be in lieu of <u>the state per pupil basic aid otherwise other state education funding</u> available for each child.</p>	<p>Revisions were made to comply with the Virginia Appropriations Act and the Standards of Quality funding formulae.</p>
<p>8 VAC 20-81-300</p>	<p>Subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public insurance</p>	<p>Revised subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public <u>benefits or insurance programs in</u></p>	<p>Revisions made to comply with federal regulatory requirements.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	programs in order for their child to receive a free appropriate public education;”	order for their child to receive a free appropriate public education;”	
8 VAC 20-81-320	Subdivision C 1: “...having the knowledge and skills to service children with disabilities....”	Revised subdivision C 1: “...having the knowledge and skills to <del>service</del> <u>serve</u> children with disabilities....”	Typographical error.
	* Subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child’s IEP.”	Inserted new language in subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child’s IEP. <u>Related services providers must be qualified consistent with the requirements of subdivision 19(a) of 8VAC20-81-20.</u> ”	Language inserted to comply with federal regulatory requirements.
8 VAC 20-81-340	Referenced caseloads for “Severe Disabilities”.	Deleted references to “Severe Disabilities”.	References to “Severe Disabilities” were deleted from other sections of the regulations, but inadvertently were retained in this section.
	Outlined case load standards.	Revised caseload standards for Level II children with a paraprofessional 100% of the time, who have an Emotional Disability, Hearing Impairment, Learning Disability, Intellectual Disability, Orthopedic Impairment, or Other Health Impairment.  Clarified that there are not caseload standards for Level II children with Speech or Language Impairment.	The caseload standards were revised to correct typographical errors. As corrected, the caseload standards mirror current requirements.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

See attached document.

**All changes made in this regulatory action**

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

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-80 et seq.	8 VAC 20-81 et seq.	Repealed	The following revisions were made throughout the chapter: Since the Board of Education closed the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H), references to it were deleted. In response to public comment, the term “mental retardation” was replaced with “intellectual disability,” and the term “emotional disturbance” was replaced with “emotional disability.” To ensure consistency, the term “LEA” was replaced with “local educational agency. In addition, for clarity and accuracy, citation, typographical, and grammatical errors were corrected. Finally, in some sections, such as regarding Surrogate Parents, sections were reorganized for clarity.
Foreword and Preamble	Foreword and Preamble	Repealed	Although not regulatory, it is noted that the Foreword was substantially rewritten to reflect updated information, and the Preamble was modified in response to public comment, and to note the impact of the No Child Left Behind Act of 2001.
10 Repealed	10 Definitions	Repealed	<p>Definitions for the following terms have been added to comply with federal requirements, or to provide clarity: Act; Alternative assessment; Career and technical education; Collaboration; Core academic subjects; Co-teaching; Dangerous weapon; Destruction of information; Educational placement; Educational service agencies; Eligible student; Equipment; Excess costs; Federal core academic subjects; Highly qualified special education teacher; Homeless children; Individualized education program team; Intellectual disability; Limited English proficient; Long-term placement; National Instructional Materials Access Center (NIMAC); National Instructional Materials Accessibility Standard (NIMAS); Personally identifiable; Scientifically-based research; Serious bodily injury; Services plan; Special Education Hearing Officer; Timely manner; Universal design; and Ward of the state.</p> <p>Definitions for the following terms were modified to comply with federal requirements, in response to public comments, or to provide clarity: Age of eligibility; Alternate assessment; Assistive technology device; Autism; Change in placement;</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>Change in placement for purposes of discipline; Child with a disability; Comprehensive Services Act; Consent; Developmental delay; Education record; Free appropriate public education; Functional Behavioral Assessment; Hearing impairment; Home tutoring; Impartial hearing officer; Implementation plan; Individualized education program; Initial placement; Interpreting services; Local educational agency (LEA); Orientation and mobility services; Orthopedic impairment; Other health impairment; Parent; Participating agency; Private school children with disabilities; Psychological services; Related services; School health services and school nurse services; Social work services in schools; Special education; Specific learning disability; Speech or language impairment; State-operated programs; Transition Services; and Vocational education.</p> <p>Definitions for the following terms were moved to this section from another section of the regulations: Controlled substance; Illegal drug; and Weapon.</p> <p>The following terms were deleted: Child study committee; Interpreting personnel; Itinerant; Qualified personnel; and Severe disability.</p>
<p>30 Repealed</p>	<p>20 Functions of the Virginia Department of Education</p>	<p>Repealed</p>	<p>To comply with federal requirements, provisions were included or modified which outline the VDOE's responsibilities to do the following:</p> <ul style="list-style-type: none"> <li>• Ensure that all children with disabilities have a right to a FAPE, including, but not limited to children receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;</li> <li>• Ensure children with disabilities are included in all state-wide and division-wide assessments;</li> <li>• Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children;</li> <li>• Comply with public participation guidelines in the development of policies and procedures;</li> <li>• Supervise educational programs;</li> <li>• Assist LEAs and participating state agencies to ensure state and federal requirements regarding "least restrictive environment" (LRE) are implemented;</li> <li>• Review and evaluate compliance of licensed private nonsectarian special education schools;</li> <li>• Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations;</li> <li>• Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia's objectives under the "No Child</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>Left Behind Act” (NCLB), and address graduation and drop-out rates, including performance indicators to assess progress toward achieving these goals;</p> <ul style="list-style-type: none"> <li>• Establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions);</li> <li>• Respond to complaints filed by parents regarding staff qualifications;</li> <li>• Ensure compliance with the requirements of the McKinney-Vento Act as it impacts the provision of special education and related services to children with disabilities;</li> <li>• Report and certify annually to the United States Department of Education the number of children with disabilities receiving special education and related services on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee;</li> <li>• Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in LEAs, and if so, that VDOE takes the steps required by federal mandates;</li> <li>• Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities;</li> <li>• Ensure that if VDOE provides direct services to children with disabilities, it complies with state and federal requirements, as if it is a LEA;</li> <li>• Ensure a practical method is developed and implemented to examine data to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions for children with disabilities, and if so, that VDOE follows federal requirements;</li> <li>• Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities;</li> <li>• Ensure that parents of children with disabilities are not required to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services; and</li> <li>• Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations.</li> </ul> <p>In response to public comment, the provision outlining VDOE’s responsibility to administer a special education due process system was revised to clarify VDOE’s roles and responsibilities.</p> <p>In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>of personnel development was deleted.</p> <p>The due date for the SSEAC's annual report to the Board of Education was modified from July 1<sup>st</sup> of each year to October 1<sup>st</sup>.</p> <p>To minimize the provisions that exceed federal requirements, the requirement that procedures be established to disseminate information from research, demonstration programs, and projects regarding children with disabilities was deleted.</p>
<p>40 Repealed</p>	<p>30 Responsibilities of local school divisions and state-operated programs</p>	<p>Repealed</p>	<p>The provisions outlining which LEA is responsible for the provision of FAPE to a student were restructured to clarify existing areas of ambiguity. In addition, provisions were added to address emancipated minors, married minors, students with disabilities placed in sponsored residential homes; and residency disputes between LEAs, or between a parent and the LEA. A provision was also added indicating that children with disabilities are entitled to FAPE regardless of citizenship or immigration status. Finally, revisions were made to clarify that the LEA of residence remains responsible for the provision of FAPE in the least restrictive environment for students with disabilities who are placed long-term in a SOP for non-educational reasons.</p>
<p>45 Repealed</p>	<p>40 Special Education Staffing Requirements</p>	<p>Repealed</p>	<p>Provisions were added to require that special education teachers be "highly qualified," in accordance with the federal special education regulations.</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements;</li> <li>• A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and</li> <li>• The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent.</li> </ul> <p>To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child's IEP team, rather than a 5 ½ hour day.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>To provide clarity and as a result of recent case law, the provisions regarding the qualifications for educational interpreting services have been modified to provide some flexibility regarding the credentials that an educational interpreter must obtain, while ensuring that children with disabilities are provided with quality interpreting services. The provisions which previously permitted waiver of the qualifications have been removed to comply with federal regulatory requirements, but a phase-in process for the new criteria has been included. In addition, a provision was inserted to clarify that the qualifications of an individual providing sign language services to a child who is not deaf or hard of hearing will be determined by the LEA.</p>
<p>50 Repealed</p>	<p>50 Child find</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• “Wards of the State” must now be included in each LEA’s child find program;</li> <li>• Each LEA’s responsibilities for child find activities relative to parentally-placed private school students were expanded;</li> <li>• Screenings for instructional purposes are not considered an evaluation; and</li> <li>• VDOE prohibits State and LEA personnel from requiring parents of children with disabilities to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services. However, LEA personnel may share classroom-based observations with the parents regarding a student’s performance, or need to be evaluated.</li> </ul> <p>In accordance with the <i>Code of Virginia</i> and the Board of Education regulations, children must be screened for scoliosis.</p> <p>To minimize state regulations that exceed the federal requirements, the following requirements were modified:</p> <ul style="list-style-type: none"> <li>• Specific provisions which outlined how a LEA was required to conduct its annual public awareness campaign were replaced by a single provision which requires that each LEA have procedures to document its public awareness campaign;</li> <li>• The timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings, were removed and replaced by a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the <i>Code of Virginia</i> and other state regulations; and</li> <li>• The Child Study Committee requirements were removed,</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>and replaced by a framework for a school-based structure for referrals, including timelines, required team members, and procedures for the referral process. The new provisions provide LEAs with greater flexibility to use scientific, response to intervention methods, while maintaining procedural protections for children suspected of having a disability.</p>
<p>52 Repealed</p>	<p>60 Referral for initial evaluation</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• A referral for an initial evaluation may be made by the VDOE or any state agency;</li> <li>• Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments;</li> <li>• Exceptions to the 65 business day timeline for the completion of an evaluation; and</li> <li>• New parental consent provisions for initial evaluations, including the LEA’s options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances, parental consent is not required for the initial evaluation of a ward of the state.</li> </ul> <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>To minimize state regulations that exceed the federal requirements, while providing LEAs with greater flexibility to use scientific, response to intervention methods, and while maintaining procedural protections for children suspected of having a disability, the multiple requirements and timelines regarding Child Study Committees were deleted and provisions reflecting the new school-based structure for referrals were inserted.</p>
<p>54 Repealed</p>	<p>70 Evaluation and Reevaluation</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• The team must review local or state assessments and classroom-based observations;</li> <li>• The team must determine what additional data is necessary to determine the child’s educational needs, the present level of academic achievement and related developmental needs, and whether or not the child needs or continues to need special education and related services;</li> <li>• New requirements regarding the administration of an evaluation in the language and form most likely to yield</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>accurate information;</p> <ul style="list-style-type: none"> <li>• A written copy of the evaluation report must be provided at no cost to the parent;</li> <li>• Assessments of a child with a disability, or who is suspected of having a disability, who transfers between LEAs in the same school year, must be coordinated by the LEAs to ensure prompt completion of the full evaluation;</li> <li>• A reevaluation must be completed if the LEA determines that the child’s educational or related services needs warrant a reevaluation, and at least every three years, unless the parent and the LEA agree that an evaluation is unnecessary;</li> <li>• A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise;</li> <li>• The LEA’s responsibilities regarding parental consent when administering an evaluation that is administered to all children, and when the parent of a child who is home-instructed, home-tutored, or parentally-placed in a private school refuses, or fails to respond to a request to provide consent to evaluate;</li> <li>• The term “test” was replaced with the term “assessment;”</li> <li>• Modifications were made to the requirements if additional data is not needed for an evaluation, including: <ul style="list-style-type: none"> <li>➤ A LEA must provide the parent with prior written notice (PWN) of the right for a parent to request an evaluation to determine the child’s educational needs; and</li> <li>➤ A LEA is not required to gather additional information unless the parent requests the evaluation for the purpose of determining if the child continues to have a disability or to determine the child’s educational needs.</li> </ul> </li> </ul> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• A provision was added, indicating that the parent may resolve a dispute regarding the LEA’s refusal to do an evaluation, via mediation or due process procedures;</li> <li>• Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and</li> <li>• A provision was inserted, noting that a LEA is not required to evaluate a child with a disability who graduates with a standard or advanced diploma, but the parent must receive PWN of the change in placement.</li> </ul> <p>To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified:</p> <ul style="list-style-type: none"> <li>• Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with federal regulatory</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>requirements;</p> <ul style="list-style-type: none"> <li>• The provision allowing the group to conduct its review without a meeting was deleted; and</li> <li>• The requirement that a triennial evaluation be initiated no less than 65 business days prior to the third anniversary of the last date of eligibility was removed. Rather, a reevaluation process must be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.</li> </ul> <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>In response to public comment, inserted a provision requiring that a written copy of the evaluation report(s) be provided to the parent(s) prior to or at the meeting where eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.</p>
<p>56 Repealed</p>	<p>80 Eligibility</p>	<p>Repealed</p>	<p>The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section.</p> <p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• In addition to determining whether or not a child is eligible for special education and related services, the eligibility group must determine the educational needs of the child;</li> <li>• A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in math or reading, including the essential components of reading instruction;</li> <li>• The requirements for determining a child eligible as a child with a specific learning disability; and</li> <li>• Parental consent must be obtained before personally identifiable information is released for children who are parentally placed in a private school outside their LEA of residence.</li> </ul> <p>The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations:</p> <ul style="list-style-type: none"> <li>• Required eligibility group considerations;</li> <li>• Requirements for documenting the eligibility group's determination of eligibility;</li> <li>• New required members of the eligibility group; and</li> <li>• Requirements that as part of the eligibility process, the eligibility group ensure that a child is, or has been, observed in routine classroom instruction.</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>For clarity:</p> <ul style="list-style-type: none"> <li>• A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group;</li> <li>• The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120; and</li> <li>• New eligibility criteria were added for all disability categories, and a requirement was inserted that LEAs use the new criteria as part of the determination of whether a child has a disability.</li> </ul> <p>The ages of eligibility for “Developmental Delay” were changed from two through eight, inclusive, to two through five, inclusive. School divisions that have eliminated the upper age range through age 8 report documented success in providing direct support to children who are at risk for academic or behavioral difficulty in the general education classroom. They have reduced the over identification of children, particularly for children of color and poverty, while at the same time placing more emphasis on timely interventions within their general education programs. Parents and school personnel still retain the right to request to initiate the evaluation-eligibility process of children suspected of having a disability. Some children, served under the DD category from ages two to five, inclusive, will continue eligibility for special education and related services and be more properly served in one of the other disability categories, such as autism, other health impaired, or multiple disabilities.</p> <p>To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.</p>
<p>58 Repealed</p>	<p>90 Termination of special education and related services</p>	<p>Repealed</p>	<p>To comply with federal requirements, each LEA must complete a summary of academic achievement and functional performance when a child with a disability graduates with a standard or advanced diploma or reaches the age of 22.</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• A provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services;</li> <li>• Inserted a provision that although an evaluation must be completed prior to the complete termination of special education and related services, to terminate a related service, the IEP team may rely on current data in the child’s education record, or complete an evaluation in accordance</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>with 8 VAC 20-81-70.</p> <ul style="list-style-type: none"> <li>Provisions outline the LEA’s responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.</li> </ul>
<p>60 Repealed</p>	<p>100 Free appropriate public education</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential;</li> <li>VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015;</li> <li>LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C;</li> <li>Provisions outlining each LEA’s responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and</li> <li>Provisions outlining VDOE’s responsibilities regarding the methods and payments for ensuring children with disabilities are provided with FAPE.</li> </ul> <p>To comply with federal regulatory requirements, the provisions outlining the LEA’s responsibility for ensuring that a child with a disability may participate in physical education was modified.</p> <p>To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each LEA’s responsibilities regarding the provision of personal devices, the length of the commute of a child with a disability, extended school year services, and disability harassment.</p> <p>To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities.</p> <p>For clarity, inserted:</p> <ul style="list-style-type: none"> <li>Provisions that FAPE must be provided to children with disabilities who meet the age of eligibility requirements in 8 VAC 20-81-10, and to children with disabilities who reside within the school division but do not hold a valid U.S.</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			citizenship or student visa; <ul style="list-style-type: none"> <li>• A cross-reference to 8 VAC 20-81-130 A 2, which also references the LEA’s responsibility to ensure that supplementary aids and services are provided, as determined appropriate and necessary by the IEP team, to provide children with disabilities an equal opportunity to participate in non academic and extracurricular activities; and</li> <li>• A requirement that the IEP team determines the length of the school day for preschool-aged children with disabilities.</li> </ul>
62 Repealed	110 Individualized education program	Repealed	To comply with federal requirements, the following provisions were added: <ul style="list-style-type: none"> <li>• The LEA’s responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings;</li> <li>• The LEA’s option to permit a child’s IEP to be amended without convening an IEP meeting, if the parent and the LEA agree, including that the IEP team members must be informed of any modifications, the meeting does not substitute for the annual IEP review, and upon request of the parent, the LEA must provide a revised copy of the IEP with the amendments incorporated;</li> <li>• The IEP team must include not less than one regular education teacher of the child, and not less than one special education teacher of the child, rather than “at least one” of each;</li> <li>• The provision previously outlined in 8 VAC 20-80-62 C. 2. c., was replaced with a provision outlining the LEA’s obligation to obtain parental consent, or the consent of a child who has reached the age of majority, and to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services;</li> <li>• A LEA must, at the request of the parent, invite the Part C coordinator or other representative of the Part C system to attend the initial IEP meeting to assist with the smooth transition of services, and the notice of the initial IEP meeting must inform the parent(s) of this right;</li> <li>• If the LEA complies with certain requirements, a required member of the IEP team may be excused from attending the IEP meeting, in whole or in part;</li> <li>• The distinction between the secondary transition services provided to children with disabilities at age 14, and at age 16 have been deleted, including the distinction in the IEP meeting notice requirements;</li> <li>• During the development, review, and revision of a child’s IEP, the team must consider the academic, developmental, and functional needs of the child; however, the requirement that the results of the child’s performance on any general state or division wide assessment program be considered was deleted;</li> </ul>

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			<ul style="list-style-type: none"> <li>• Nothing requires the inclusion of information into a child’s IEP beyond what is specifically required;</li> <li>• The content of a child’s IEP must include, in part, the following: A statement of the child’s present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; a statement of any individual accommodations or modifications that are necessary to measure the child’s academic and functional performance on a state and division-wide assessment, and if the IEP team determines that the student must take an alternate assessment, a statement, which includes federally-required elements; a statement of how the child’s progress toward the annual goals will be measured and when the periodic reports on the progress the child is making will be provided; and required information regarding secondary transition, including appropriate measurable postsecondary goals based on age-appropriate transition assessments, and transition services, including courses of study, which are based on the child’s needs, and consider the child’s preferences and interests;</li> <li>• Deleted former provision 8 VAC 20-80-62 B. 9., which noted that a LEA, teacher, or other person is not required to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives;</li> <li>• Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and</li> <li>• In the development of an IEP for a preschool-aged child with a disability, the IEP team must consider an IFSP that contains the IFSP content contained in Part C, and may incorporate those components in the child’s IEP.</li> </ul> <p>For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination, also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary. The provision previously at 8 VAC 20-80-62 B. 5. was deleted given the insertion of the above provision.</p> <p>To ensure the provision of FAPE to a child with a disability:</p> <ul style="list-style-type: none"> <li>• An IEP must be implemented as soon as possible following receipt of parental consent; and</li> <li>• Transition services must be initiated for a student with a disability prior to the child entering secondary school but</li> </ul>

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			<p>not later than the first IEP to be in effect when the child turns 14. Not later than the first IEP to be in effect when the child turns 16, the IEP must include, if appropriate, a statement of interagency responsibilities or any needed linkages.</p> <p>In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs;</li> <li>• The LEA shall have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile;</li> <li>• The LEA must give the parent(s) a copy of the child's IEP at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days;</li> <li>• An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally;</li> <li>• For a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion; and</li> <li>• The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes.</li> </ul> <p>The following provisions were deleted:</p> <ul style="list-style-type: none"> <li>• Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child's caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a "parent;"</li> <li>• To comply with applicable case law, from 8 VAC 20-80-62 F. 6., the statement, "Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B.;" and</li> <li>• Former provision 8 VAC 20-80-62 F. 5. f., regarding the Literacy Passport Test, as it is no longer applicable.</li> </ul> <p>In response to public comment:</p> <ul style="list-style-type: none"> <li>• Inserted provisions requiring that each child's IEP team consider the child's needs for benchmarks or short-term objectives, even if child is not participating in the Virginia Alternate Assessment Program. That consideration must be documented;</li> <li>• Inserted a requirement that progress reports must be provided at least as often as parents are informed of the progress of their children without disabilities;</li> <li>• Inserted a requirement that at least one year before a</li> </ul>

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			<p>student reaches the age of majority, the student’s IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights; and</p> <ul style="list-style-type: none"> <li>Expanded the provisions regarding allowing a parent to audiotape or videotape a meeting, distinguishing between the parent’s right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and the LEA’s option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at meetings convened under the special education regulations, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings. Given the expanded language in these provisions, they were moved to the new 8 VAC 20-81-170.</li> </ul>
N/A	120 Transfer students		<p>For clarity, these provisions, which were previously included as part of 8 VAC 20-80-56, have been moved to their own section. To comply with federal regulatory requirements, the new LEA must take reasonable steps to obtain the child’s records from the previous LEA in which the child was enrolled, and the previous LEA must take reasonable steps to respond to the request from the new LEA.</p> <p>For clarity, the following provisions have been included:</p> <ul style="list-style-type: none"> <li>If an LEA is not forthcoming in the provision of a child’s educational records, VDOE may be contacted for assistance;</li> <li>If the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting, pending an evaluation, if an evaluation is necessary;</li> <li>The LEA may develop and implement an interim IEP while obtaining and reviewing the information needed to develop a new IEP;</li> <li>If there is a dispute between the new LEA and the parent regarding interim services or a new IEP, the LEA must provide FAPE to the child in consultation with the parents(s), including services comparable to those described in the child’s IEP from the previous LEA;</li> <li>If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and</li> <li>To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA’s responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition</li> </ul>

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			<p>period during which the former CSA team is responsible for funding services, and the new LEA must review and revise, if necessary, and implement a new IEP.</p>
<p>64 Repealed</p>	<p>130 Least restrictive environment and placements</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities;</li> <li>• LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child's IEP team to participate in nonacademic settings. A cross-reference to 8 VAC 20-81-100 H. was inserted; and</li> <li>• Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities.</li> </ul> <p>Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include "integrated service delivery."</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• Added language to emphasize that the LRE provisions apply to children with disabilities, aged two to 21;</li> </ul>
<p>65 Repealed</p>	<p>140 Placement of children at the Virginia schools</p>	<p>Repealed</p>	<p>To increase flexibility for school divisions and the Virginia School for the Deaf and Blind at Staunton (VSDB-S), deleted the requirement that school divisions and VSDB-S develop contractual agreements to ensure compliance with the federal and state special education requirements. However, retained the provisions that outline responsibility for the transportation of students with a disability to and from VSDB-S.</p>
<p>66 Repealed</p>	<p>150 Private School Placement</p>	<p>Repealed</p>	<p>To comply with federal requirements, the previous reference to "residential placement" in 8 VAC 20-80-66 A. 1., was modified to reference "a private school or facility."</p> <p>The federal language modified each LEA's responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, LEAs are responsible for those children who are parentally-placed in private schools, which are physically located within the LEA. Additional federal changes to each LEA's responsibilities regarding parentally-placed private school children with disabilities include the following:</p> <ul style="list-style-type: none"> <li>• An expansion of the LEA's child find responsibilities,</li> </ul>

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			<p>including ensuring that comparable activities to those for public school students are undertaken, that LEA staff meet with representatives of private schools to determine how to conduct a thorough and complete child find process, and that the child find process ensure the equitable participation of parentally-placed private school children, and an accurate count of that population of students;</p> <ul style="list-style-type: none"> <li>• If a LEA has not expended all of its proportionate share amount for equitable services by the end of the fiscal year for which Congress appropriates the funds, the LEA must carry the funds over for an additional year;</li> <li>• LEAs may supplement, but not supplant, the proportionate share amount of federal funds for the provision of equitable services;</li> <li>• In calculating the proportionate share amount, LEAs must engage in timely and meaningful consultation with private school representatives prior to completing child find responsibilities to determine the number of parentally-placed private school children attending private schools within the LEA;</li> <li>• The child count must be conducted on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee;</li> <li>• There has been an expansion of the requirements regarding the LEA's responsibility to consult with private school representatives to include five different elements, including how, where, and by whom special education and related services will be provided for parentally-placed private school students, and the types of services to be provided. If the LEA disagrees with the private school representatives regarding the provision of services or the types of services, the LEA must provide them with a written explanation of the LEA's reasoning;</li> <li>• Following consultation, the LEA must obtain a written affirmation from the private school representatives;</li> <li>• Under certain circumstances, private school representatives may file a complaint to VDOE against the LEA, and if the complainant is dissatisfied with VDOE's decision, the decision may be appealed to the U.S. Department of Education;</li> <li>• The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public school, except that the requirements regarding highly qualified special education teachers do not apply;</li> <li>• Services may be provided by LEA employees, or through contract with the LEA;</li> <li>• Special education and related services provided to parentally placed private school children with disabilities,</li> </ul>

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			<p>must be secular, neutral, and nonideological;</p> <ul style="list-style-type: none"> <li>• The dispute resolution options available to parentally placed private school children apply to the LEA where the private school is located; and</li> <li>• Each LEA must maintain for its records, and provide to VDOE, certain data regarding parentally-placed private school children.</li> </ul> <p>For clarity, and to comply with federal requirements, the federal definition of the terms “elementary school” and “secondary school” were added. A new definition of the term “private school,” was also included, outlining applicable federal and state requirements.</p>
<p>68 Repealed</p>	<p>160 Discipline procedures</p>	<p>Repealed</p>	<p>The section was revised to comply with federal requirements, including the addition or modification of the following provisions:</p> <ul style="list-style-type: none"> <li>• School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct;</li> <li>• A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year;</li> <li>• A child with a disability may be removed from their current educational placement to another setting for disciplinary reasons to the extent that the alternatives are applied to children without disabilities;</li> <li>• The LEA’s responsibilities for providing services to a child with a disability during a short-term removal, including the LEA’s responsibilities to ensure that beginning on the 11<sup>th</sup> day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student’s IEP goals, and be included in VDOE and division wide assessment programs;</li> <li>• The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child’s behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis;</li> <li>• Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child’s disability. Special circumstances now include if the child inflicts serious bodily injury while at school or at a school function;</li> <li>• The LEA’s responsibilities for providing services to a child with a disability during a long-term removal, including the LEA’s responsibilities to ensure that the student is provided</li> </ul>

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			<p>with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student’s IEP goals, be included in VDOE and division wide assessment programs, and receives, as appropriate, a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) to address the behavior violation so that it does not recur;</p> <ul style="list-style-type: none"> <li>• Deleted the requirement that the LEA automatically conduct a FBA and the IEP team meet to develop a BIP, if it has not already done so, no later than 10 business days after first removing a student for more than 10 school days in a school year, or commencing a long-term removal. Rather, a BIP must be developed, at a minimum when a student’s behavior interferes with his learning or that of others, or if the IEP team determines that the child’s behavior is a manifestation of his disability and a FBA or BIP have not already been completed;</li> <li>• Deleted the provisions, which previously appeared in 8 VAC 20-80-68 C. 4. b., regarding determining that maintaining a child with a disability in the current placement is substantially likely to result in injury to the student or others, except that if an LEA believes that maintaining the student in the current educational placement is substantially likely to result in injury to the child or others, the LEA may request a due process hearing, and a Special Education Hearing Officer may order a change in placement to an IAES for not more than 45 school days;</li> <li>• A manifestation determination decision must be made by the LEA, the parent(s), and the relevant members of the IEP team, rather than by “the IEP team and other qualified personnel;” therefore, the definition of “other qualified personnel” was also deleted;</li> <li>• The provisions, which previously appeared at 8 VAC 20-80-68 C. 5. (2), were replaced with the new federal requirements for determining whether or not a child’s behavior is a manifestation of his disability, including the LEA’s responsibilities if the child’s behavior is or is not a manifestation of his disability;</li> <li>• Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.;</li> <li>• Added provisions regarding the applicable timelines for an expedited due process hearing, including 20 school days to complete a hearing from the date the request for the hearing is filed, 10 school days following the hearing to issue a determination, and 7 calendar days to convene a resolution session, unless waived;</li> <li>• A Special Education Hearing Officer may return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of the federal requirements or the child’s behavior was not a</li> </ul>

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			<p>manifestation of the child’s disability;</p> <ul style="list-style-type: none"> <li>• The provisions which previously outlined a child’s placement during an appeal, and which included a child’s right to “stay put” in the current educational placement during an appeal were deleted. Instead, a child with a disability must remain in the IAES pending the decision of the Special Education Hearing Officer or until the expiration of the time for the disciplinary placement;</li> <li>• Deleted the provision which previously permitted the “behavior or performance of the student” to trigger protections for a student not yet eligible for special education and related services;</li> <li>• A LEA must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred, a teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA;</li> <li>• A LEA is not deemed to have knowledge that a child is a child with a disability if the parent has not allowed a previous evaluation of the child, has refused services for the child, or the child has been evaluated and determined ineligible;</li> <li>• Previous provisions from 8 VAC 20-80-68 C. 9. were deleted; and</li> <li>• The LEA is required to include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child, transmit the statement to the VDOE upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students, and include the statement in the child’s educational records, and with the child’s IEP, when the child transfers from one school to another. Provisions which outline the content of the statement were also added.</li> </ul> <p>For clarity, the definitions of the following terms were included in 8 VAC 20-81-10: Weapon, Controlled substance, Illegal drug, and Serious bodily injury.</p> <p>In response to public comment, inserted additional language regarding FBAs and BIPs, to clarify that when a child’s behavior impedes his learning or that of others, the IEP must consider the use of positive behavioral interventions, strategies and supports to address the behavior. Also inserted provisions requiring the IEP team to consider developing goals and services to address the child’s behavioral needs; or conducting a FBA and determining the need for a BIP. In addition, included language emphasizing that if a FBA is an evaluation, then the parents are entitled to</p>

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			receive an independent educational evaluation, if they disagree with the evaluation.
70 Repealed	170 Procedural safeguards	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• In the case of a child with a disability who is transitioning from Part C to Part B services, the parent must be informed that an invitation to the initial IEP meeting must, at the parent’s request, be sent to the Part C service coordinator or other representative to assist with a smooth transition;</li> <li>• To ensure parent involvement in placement decisions, parents must be provided with meeting notice meeting all requirements outlined in 8 VAC 20-81-110 E.;</li> <li>• The LEA must take whatever action is necessary to ensure that the parent understands and is able to participate in group discussions regarding the child’s educational placement;</li> <li>• A child’s placement in an IAES placement is an exception to the requirement that IEP teams determine a child’s placement;</li> <li>• A parent is entitled to only one independent education evaluation (IEE) at public expense each time the LEA conducts an evaluation component with which the parent disagrees;</li> <li>• If a parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the evaluation results must be considered by the LEA, if it meets LEA criteria, in decisions regarding FAPE, and it may be presented by either party in a due process hearing;</li> <li>• If a Special Education Hearing Officer requests an IEE as part of a due process hearing, it must be at public expense;</li> <li>• The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted;</li> <li>• The events which trigger the requirement to provide a copy of the procedural safeguards document (PSD) were modified, and it was indicated that posting of a LEA’s PSD on its Web site does not satisfy the requirement to provide the PSD, as required;</li> <li>• The required content of the PSD was modified;</li> <li>• The parental consent provisions were modified, including the following: <ul style="list-style-type: none"> <li>➤ Consent is required prior to accessing a child’s public benefits or insurance;</li> <li>➤ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services;</li> <li>➤ Consent is not required prior to administering a screening to determine appropriate instructional strategies;</li> <li>➤ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state;</li> <li>➤ A LEA may, but is not required to, use mediation or due</li> </ul> </li> </ul>

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			<p>process if the parent fails to respond to a request for consent for an initial evaluation, or to override a parent's refusal to consent for an initial evaluation or reevaluation;</p> <ul style="list-style-type: none"> <li>➤ If a parent refuses consent, or fails to respond to a request for consent, for the initial provision of special education and related services, the LEA may not use mediation or due process to obtain consent. However, the LEA's failure to provide the special education and related services is not considered a denial of FAPE, and the LEA is not required to convene an IEP meeting or develop an IEP;</li> <li>➤ If a parent of a parentally-placed private school child refuses consent for an initial evaluation or reevaluation, the LEA may not use mediation or due process to secure consent; however, the child will not be considered eligible for equitable services;</li> <li>➤ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and</li> <li>➤ The LEA must make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services.</li> </ul> <ul style="list-style-type: none"> <li>• LEAs using private insurance or public insurance and benefits to pay for services required for the provision of FAPE must provide the parent with notice and obtain parental consent as outlined in 8 VAC 20-81-300;</li> <li>• An LEA must comply with a parent's request to inspect and review their child's educational records before a resolution session is convened in accordance with 8 VAC 20-81-210;</li> <li>• Modifications were made to the provisions outlining when parental consent is required prior to the disclosure of personally identifiable information, including that consent is required before personally identifiable information is shared between the LEA where a student resides and a LEA where the student is parentally-placed in a private school;</li> <li>• An LEA must provide the parent a copy of the child's IEP at no cost; and</li> <li>• If a LEA makes the option available, parents of a child with a disability may elect to receive PWN, the PSD, and notice of a request for due process by electronic mail.</li> </ul> <p>In accordance with guidance from the U.S. Department of Education and the provisions of the <i>Code of Virginia</i>, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. A definition of electronic signature is included.</p> <p>Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>For clarity:</p> <ul style="list-style-type: none"> <li>Expanded the provision permitting a hearing to be held to challenge in a child’s education records; and</li> <li>Inserted into this section provisions that were previously included in 8 VAC 20-80 62 D. 6. regarding allowing a parent to audiotape or videotape a meeting. These provisions were expanded to grant parents the right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and to provide LEA’s the option to have policies that prohibit, limit, or otherwise regulate the use of video recording devices at meetings, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings.</li> </ul> <p>In response to public comment:</p> <ul style="list-style-type: none"> <li>Inserted a provision requiring LEAs to have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile;</li> <li>Inserted a requirement that a LEA may presume a parent has the authority to inspect and review a child’s education records unless provided a copy of a judicial order or decree, or other legally-binding documentation; and</li> <li>Clarified that LEAs must ensure that electronic communications regarding any matter associated with the child be part of the child’s education record.</li> </ul>
72 Repealed	180 Transfer of rights to students who reach the age of majority	Repealed	<p>To comply with modifications to the Virginia Code, previous provision 8 VAC 20-80-72 C. 4. was revised to indicate that an adult student will not be considered competent if admitted to a facility for the training, treatment, and habilitation of persons with mental retardation, and to delete the section of that provision which stated that an adult student will not be considered competent if in a coma and eligible for admission to a state hospital.</p> <p>In response to public comments, inserted a requirement that at least one year before a student reaches the age of majority, the student’s IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights</p>
74 Repealed	190 Mediation	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>Mediation is available to resolve any matter arising under Part B of IDEA at any time a joint resolution is made to VDOE by the LEA and the parent, including matters arising prior to the filing of a state complaint or request for due process;</li> <li>VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation.</p> <ul style="list-style-type: none"> <li>• Qualified mediators must be trained in effective mediation techniques; and</li> <li>• If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements.</li> </ul> <p>To assist in complying with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and</li> <li>• Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.</li> </ul>
<p>76 Repealed</p>	<p>210 Due process hearing</p>	<p>Repealed</p>	<p>To comply with federal requirements, numerous provisions were added, including the following:</p> <ul style="list-style-type: none"> <li>• Timelines for filing a request for a due process hearing;</li> <li>• The LEA's authority to use due process to obtain parental consent;</li> <li>• The LEA's authority to request an expedited due process hearing;</li> <li>• Sufficiency of a due process notice, including the procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied;</li> <li>• The LEA's responsibility to document reasonable efforts to obtain parental participation in the resolution meeting;</li> <li>• A copy of the PSD must be provided by a LEA upon receipt of the parent's first request for a due process hearing in a school year;</li> <li>• The qualifications of the Special Education Hearing Officer;</li> <li>• The LEA's responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C;</li> <li>• An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing;</li> <li>• A Special Education Hearing Officer's decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met;</li> <li>• The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements;</li> <li>• Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved;</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> <li>• A parent is entitled to an IEE at public expense if the parent disagrees with the evaluation completed in response to an order by the Special Education Hearing Officer; and</li> <li>• The timelines for appealing a due process decision to state or federal court.</li> </ul> <p>In compliance with the <i>Code of Virginia</i>, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation.</p> <p>To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted.</p> <p>To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited.</p> <p>To ensure the effective and efficient operation of the due process system, the following provisions were added or modified:</p> <ul style="list-style-type: none"> <li>• The request for a hearing must be made in writing to VDOE, with a copy of the request delivered contemporaneously by the requesting party to the other party;</li> <li>• If a request for a due process hearing is received solely by VDOE, VDOE will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required;</li> <li>• Requirements for the duration of the Special Education Hearing Officer’s authority were added;</li> <li>• All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied;</li> <li>• A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE;</li> <li>• The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer’s responsibility to determine the scope of the conference, to document, if applicable, the reasons for not conducting a pre-hearing conference, and the pre-hearing</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>determinations;</p> <ul style="list-style-type: none"> <li>• The Special Education Hearing Officer has the discretion to permit either party to raise an issue during the hearing which was not included in the notice by the moving party, depending on the circumstances. (Federal requirements limited this option only to those issues raised by the LEA.);</li> <li>• A Special Education Hearing Officer may not require parties to submit briefs as a condition of rendering a decision, but the Special Education Hearing Officer may permit such a submission on the parties' request;</li> <li>• The required elements of a due process decision were modified;</li> <li>• A Special Education Hearing Officer must issue a ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE;</li> <li>• The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions;</li> <li>• VDOE must ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that the area(s) have been corrected;</li> <li>• The hearing officer has the discretion to hear disputes arising under IDEA and Section 504 as part of the same hearing process, if both are raised in the due process notice;</li> <li>• Findings of fact and decisions must be provided in writing to the parties and their attorneys, and not just to the attorneys, as previously required; and</li> <li>• The provisions regarding implementation plans were modified to require an implementation plan only for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or withdrawal of the due process request.</li> </ul> <p>To provide clarity:</p> <ul style="list-style-type: none"> <li>• Several provisions were collapsed, including the deletion of the provisions, which previously appeared at I.3.-I.5. were deleted;</li> <li>• Language was clarified regarding the role of the Supreme Court of Virginia versus the role of VDOE in the administration of the impartial special education due process system, including that VDOE uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration;</li> <li>• Inserted the requirement that even if the applicable appeal period has expired, the record of the hearing and the findings of fact and decision must be provided to the parent(s) at no cost;</li> <li>• Indicated that the resolution period is part of, and not</li> </ul>

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			<p>separate from, the expedited due process hearing timeline;</p> <ul style="list-style-type: none"> <li>• Required that parties may enter into a confidentiality agreement as part of their resolution agreement;</li> <li>• Outlined that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Provisions regarding the certification of hearing officers were inserted based on guidance from the Office of the Attorney General.</li> </ul>
<p>78 Repealed</p>	<p>200 Complaint resolution procedures</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known;</li> <li>• A complaint must address an action that occurred not more than one year prior to the date the complaint is received, and can no longer include complaint allegations for a longer period of time, even if the violation is continuing;</li> <li>• The complaint must be simultaneously filed with VDOE and the LEA;</li> <li>• VDOE’s complaint notification to the LEA must include notice that the LEA has the opportunity to propose a resolution, and the parties have the opportunity to engage voluntarily in mediation;</li> <li>• VDOE must conduct an investigation which includes a complete review of all relevant documentation; and</li> <li>• The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation.</li> </ul> <p>To ensure compliance with the new federal requirements regarding sufficiency of the complaint, a provision was added outlining VDOE’s procedure if a complaint is insufficient.</p> <p>The requirement that VDOE send written notification of its receipt of a complaint to “other appropriate [VDOE] personnel” was deleted.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• The LEA’s responsibility to respond after receiving notification of a complaint was added;</li> <li>• VDOE’s procedure if a complaint is filed by an individual other than the child’s parent(s) or their legal counsel;</li> <li>• VDOE will notify the parties in writing if the timeline for the complaint is extended; and</li> <li>• Parties to a complaint may appeal the complaint findings</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>within 30 calendar days of the issuance of a decision, in accordance with procedures established by VDOE.</p> <p>For clarity, current provisions 8 VAC 20-80-78 D. through G. were reordered to mirror the complaint process, and provision 8 VAC 20-80-78 F. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p> <p>Given other modifications in the section, the language previously located in 8 VAC 20-80-78 C.3.a. and C.3.b. was deleted.</p>
<p>80 Repealed</p>	<p>220 Surrogate parent procedures</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state;</li> <li>• A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary;</li> <li>• A surrogate parent may not be an employee of a LEA; and</li> <li>• A temporary surrogate, who is a staff member of an emergency shelter, transition shelter, independent living program, or street outreach program, may be appointed to an unaccompanied homeless youth, even though the surrogate is employed by an agency involved in the education or care of the child, if the surrogate otherwise meets the qualifications to be a surrogate parent.</li> </ul> <p>To comply with federal requirements, a LEA must appoint a surrogate parent for a child who is a ward of the state, or who is an unaccompanied homeless youth. However, language was inserted to clarify that the appointment of a surrogate in these circumstances, is only required if no parent can be identified, or the parent's whereabouts are unknown.</p> <p>Based on guidance from US DOE, former provision 8 VAC 20-80-80 C 2 c was deleted.</p> <p>To minimize state regulations that exceed the federal requirements:</p> <ul style="list-style-type: none"> <li>• LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed;</li> <li>• The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and</li> <li>• The training requirements previously outlined in 8 VAC 20-80-80 D. 1. b. have been modified to indicate that a surrogate parent must have knowledge and skills to ensure adequate representation of the child. Surrogate parents</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>are no longer required to complete a LEA approved training session prior to representing the child or to attend annual training thereafter.</p> <p>For clarity, language was revised to note:</p> <ul style="list-style-type: none"> <li>• Any individual meeting the definition of “parent” may allow a relative or private individual to act as a “parent;” and</li> <li>• Each LEA must establish their policies and procedures relative to surrogate parents in accordance with Virginia’s special education regulations.</li> </ul>
<p>90 Repealed</p>	<p>230 Local educational agency administration and governance</p>	<p>Repealed</p>	<p>To comply with federal requirements, provisions were added which indicate:</p> <ul style="list-style-type: none"> <li>• A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context;</li> <li>• A timeline for the LEA’s participation in a transition planning conference for a student transitioning from Part C to Part B;</li> <li>• New LEA responsibilities regarding migratory children and early intervening services; and</li> <li>• The LEA’s responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA’s option to coordinate with the NIMAC.</li> </ul> <p>The requirements regarding the LEA’s submission of an annual plan were revised to clarify the LEA’s responsibility. Also, in accordance with federal modifications, LEAs are no longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development.</p> <p>The requirements regarding the local advisory committee (LAC) were modified:</p> <ul style="list-style-type: none"> <li>• To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities;</li> <li>• To require that the committee include one teacher with any addition LEA personnel serving only serve as consultants; and</li> <li>• To clarify the role of the LAC, including in the review of the school division’s annual plan.</li> </ul> <p>For clarification, a provision was inserted which outlines a LEA’s responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30<sup>th</sup>.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
100 Repealed	240 Eligibility for funding	Repealed	In compliance with federal requirements, LEAs are no longer required to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.
110 Repealed	250 State funds for local school divisions	Repealed	<p>To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment.</p> <p>To ensure compliance with the <i>Code of Virginia</i>, provisions were expanded that outline VDOE's obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children's home.</p> <p>The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education.</p> <p>The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Superintendent of Public Instruction or designee with greater flexibility.</p>
120 Repealed	260 Federal funds	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• Provisions were added which outline the LEA's responsibilities regarding the following: Excess costs; Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities;</li> <li>• Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and</li> <li>• The language, which previously permitted the awarding of "sliver grants," was deleted.</li> </ul>
130 Repealed	270 Funds to assist state-operated programs	Repealed	For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.
140 Repealed	280 Funding, withholding, and recovery of funds	Repealed	To comply with the <i>Code of Virginia</i> , a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA's state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>services to such children.</p> <p>To comply with federal requirements, if a LEA is notified in writing by VDOE of a decision to withhold funds, the LEA must provide public notice to its jurisdiction regarding the pendency of the action.</p> <p>For clarity, provision 8 VAC 20-80-140 C. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p>
150 Repealed	290 Appeal of administrative decision regarding funding	Repealed	<p>To comply with federal requirements, a LEA must appeal within 20 days of a decision made during an administrative hearing for VDOE to withhold its funding.</p> <p>To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.</p>
152 Repealed	300 Use of public and private insurance	Repealed	<p>To comply with federal requirements, the section was modified to indicate that like with private insurance, if a LEA is seeking to access a child's public benefits or insurance to provide the child with services required for FAPE, the LEA must obtain informed parental consent each time that access to the child's public benefits or insurance is sought, and provide the parent with notice containing specific elements, including that the parent's refusal to allow access does not relieve the LEA of its responsibility to provide FAPE to the child at no cost.</p>
155 Repealed	310 Attorneys' fees	Repealed	<p>To comply with federal requirements, provisions were added which outline who may be awarded reasonable attorneys' fees, and that attorneys' fees may not be awarded relative to a resolution session.</p>
160 Repealed	320 Additional responsibilities for programs with children with disabilities in residence or custody	Repealed	<p>To comply with federal requirements, the requirement for state-operated programs to develop a comprehensive system of personnel development was deleted, and requirements to ensure that personnel are appropriately and adequately prepared and trained, including requirements for paraprofessionals, were added.</p>
190 Repealed	330 Compliance with § 504 of the Rehabilitation Act of 1973, as	Repealed	<p>To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints.</p> <p>For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	amended		is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.
190 Repealed	340 Special Education Caseload Staffing Requirements	Repealed	Deleted references to "Severe Disabilities."

**Regulatory flexibility analysis**

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

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

Small businesses will not be impacted by these regulations.

**Family impact**

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

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



# COMMONWEALTH OF VIRGINIA

## *Department of Education*

*Division of Special Education and Student Services  
Office of Dispute Resolution and Administrative Services*

P.O. Box 2120  
Richmond, Virginia 23218-2120

### **Special Education Proposed Regulations Summary of Comments September 1, 2008**

#### **PUBLIC COMMENT PERIOD:**

The official public comment period extended from April 28, 2008 through June 30, 2008. Comments received, however, prior to the official public comment period and post-NOIRA, were accepted and included in this summary. Comments were received electronically through e-mail and on the electronic Town Hall, by fax, by mail, and hand delivered. In addition, oral testimony was heard and transcribed and written comments were submitted at nine (9) public hearings held throughout Virginia: South Boston, Abingdon, Roanoke, South Riding (Loudoun County), Richmond, Norfolk, Vienna, Tappahannock, and Charlottesville.

- Total number of commenters (individuals and organizations): 1,940
- Total number of submissions (some commenters made multiple submissions): 2,233
- Total number of comments: 38,752

The following summary is a composite of the public comments received during the public hearings, and during the comment period. The Summary includes the particular regulation cite as a point of reference and the Virginia Department of Education's response to the comment(s). Requests for a copy of this document may be made to:

Melissa C. P. Smith  
Office of Dispute Resolution and Administrative Services  
Virginia Department of Education  
804-225-2013  
E-mail: [Melissa.Smith@doe.virginia.gov](mailto:Melissa.Smith@doe.virginia.gov)

**Abbreviations for Commenters:**

<b>Adm</b>	LEA Administrator	<b>Int</b>	Interpreter	<b>Psy</b>	Psychologist
<b>Adv</b>	Advocate	<b>ITC</b>	Infant & Toddler Program	<b>PT</b>	Physical Therapist
<b>AO*</b>	Advocacy Organization	<b>LAC</b>	Local Advisory Committee	<b>PTA</b>	PTA
<b>Att</b>	Attorney	<b>LEA</b>	Local Educational Agency	<b>Reg</b>	Region (1 of 8 Supt. Reg.)
<b>Aud</b>	Audiologist	<b>LEA Gen</b>	LEA Personnel - General	<b>SLP</b>	Speech/Language Therapist or Pathologist
<b>Brd</b>	LEA Board Member	<b>MD</b>	Medical Doctor	<b>SOP</b>	State Operated Program Personnel
<b>Cit</b>	Citizen	<b>Med</b>	Mediator	<b>Sped Adm</b>	Sped Administrator
<b>CSB</b>	Community Services Board	<b>NOIRA</b>	Notice of Intended Regulatory Action	<b>Sped Tch</b>	Sped Teacher
<b>Con</b>	Consultant	<b>OT</b>	Occupational Therapist	<b>SSEAC</b>	State Advisory Committee
<b>EO</b>	Elected Official	<b>Par</b>	Parent	<b>Stu</b>	Student
<b>Gen Ed</b>	General Education Teacher	<b>PO**</b>	Professional Organization**	<b>Sup</b>	Superintendent
<b>Guid</b>	Guidance Counselor	<b>PRC</b>	Parent Resource Center	<b>SW</b>	Social Worker
<b>HO</b>	Hearing Officer	<b>Prin</b>	Principal/Assistant Principal	<b>VDOE</b>	VDOE Staff
<b>IA</b>	Instructional Aide/Paraprofessional	<b>Priv</b>	Private School	<b>Voc</b>	Vocational Program Staff
<b>IHE-TTAC</b>	TTAC Staff	<b>Prog</b>	Regional Program		
<b>Indiv</b>	Individual with a disability	<b>Prv Tch</b>	Private Teacher		

\* & \*\* indicates a listing is included and is found on the next page.

**\* Advocacy Organizations that submitted comments include:**

- Albemarle-Charlottesville NAACP
- Appalachian Independence Center, Inc.
- ARC of Central Virginia
- ARC of Greater Prince William County
- ARC of Loudoun, ARC of Northern VA
- ARC of Rappahannock
- ARC of the Virginia Peninsula
- Autism Advocacy Coalition of VA
- Autism Society of America – Northern VA Chapter
- Blue Ridge Independent Living Center
- Down Syndrome Association of Greater Richmond
- Down Syndrome Association of Hampton Roads
- Down Syndrome Association of Northern VA
- Endependence Center of Northern VA
- Fairfax Area Disability Services Board
- Hanover ARC, Inc.
- Junction Center for Independent Living, Inc.
- Just Children
- National Alliance on Mental Illness in VA
- National Organization of Parents of Blind Children
- Parents of Autistic Children of Northern VA
- Parent Educational Advocacy Training Center
- Piedmont Independent Living Center
- Prince William County Autism Support Group
- Project HOPE
- Resources for Independent Living, Inc.
- Southwest VA Legal Aid Society
- The Action for Special Kids (TASK)
- VA Board for People with Disabilities
- VA Coalition for Students with Disabilities
- VA Office for Protection and Advocacy
- Voices for Virginia's Children

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**\*\*Professional Organizations that submitted comments include:**

- Learning Disabilities Association of VA
- Spotsylvania Education Association
- VA Association of Independent Specialized Education Facilities
- VA Association of Visiting Teachers and School Social Workers
- VA Council for Administrators of Special Education
- VA Division on Career Development and Transition
- VA Division for Early Childhood of the Council of Exceptional Children
- VA Education Association

Issue	Source	Comments	VDOE Response
<b>Return Regulations to VDOE for Revision</b>  (22 comments)	1 Att 4 Cit 1 Gen ed 11 Par 3 SLP 1 Voc  (21)	Support returning proposed regulations to VDOE for revisions because of the elimination of many procedural rights contained in the current regulations.	The Board of Education will consider all public comments and respond in accordance with the requirements of IDEA and the APA process.  Given the significant changes between the final regulations and the 2002 regulations, it is not feasible to use "track changes" to compare the two documents. Rather, following the completion of the APA process, VDOE will issue guidance documents comparing the two for clarity.
	1 Par  (1)	Requests that during VDOE's revision process, track changes be used to ensure clarity regarding what has been changed and the direct relationship to the new federal regulations.	
<b>General comments</b>  (4 comments)	1 Sped Adm  (1)	Requests the State Board of Education accept the proposed regulations.	The Board of Education appreciates the public's significant participation in the public comment process, and will carefully review and consider each comment as it makes final determinations regarding the final regulations to ensure that students with disabilities in Virginia are appropriately served.
	1 Stu  (1)	Comments that he wants "to learn to read and work with money."	
	1 Stu  (1)	Comments that he is the brother of a child with autism.	
	1 Stu (Group)  (1)	Group submitted a poster board as public comment, focusing on how special education has benefited the students, and supporting parental participation in the IEP process.	
<b>Paperwork Reduction</b>  (7 comments)	2 Sped Adm 2 Sped Tch  (4)	Oppose any changes that increase paperwork for teachers, shifting the focus to process rather than results. Children benefit from a teacher who is in the classroom providing instruction.	In an effort to ensure the focus of LEA staff is on instructional accountability, efforts have been made throughout these regulations to minimize paperwork, where appropriate, without compromising the procedural protections to which students with disabilities and their families are entitled.
	1 Brd 1 OT 1 Sped Tch  (3)	Support the elimination of unnecessary paperwork.	
<b>Parent Resource Centers</b>  (1 comment)	1 Par  (1)	Suggests more funding for community based PRCs as they assist parents through due process where a school based PRC does not assist parents with due process issues.	VDOE does not believe that the suggested change is in concert with the language of IDEA 2004, and its federal implementing regulations.
<b>Parent Participation in Process – General</b>  (284 comments)	1 Att  (1)	Suggests adding language that would allow parents to have the right to observe and evaluate the education and care of their children in a non-disruptive manner.	VDOE does not believe it is appropriate to regulate an LEA's policies and procedures regarding classroom observations.
	4 Adv	Oppose any changes that would limit the parent's right to be a part of the special	The final regulations continue to ensure complete parent

Issue	Source	Comments	VDOE Response
	2 AO 2 Att 1 Aud 4 Brd 58 Cit 3 EO 1 Guid 1 IHE 1 Indiv 1 Int 6 LEA Gen 1 MD 150 Par 1 PO 12 Prin 1 Psy 9 Sped Adm 15 Sped Tch 7 Stu (280)	education/IEP process or to provide consent. Rationales: <ul style="list-style-type: none"> <li>• Parents need input into the development of their child's IEP.</li> <li>• Parents need to be partners in the education process since they know their child.</li> <li>• To do otherwise, prevents the parents from serving as their child's advocate, and it is their right and responsibility to speak for their child.</li> <li>• It helps to foster the child in reaching his/her potential.</li> <li>• To do otherwise, could result in additional costs, including the cost of due process.</li> <li>• Removing parental involvement is a denial of FAPE in that it is required by the IDEA.</li> <li>• Communication between the school division and the parent needs to be improved, not reduced.</li> </ul>	participation in all aspects of the special education process. The proposed regulations continue to ensure all of the procedural protections formally provided, including the parent's right to dispute resolution options such as mediation or a due process hearing.
	1 Cit (1)	Opposes proposed changes and supports the comments and position of the Special Education Committee of Fairfax County PTAs and Gov. Tim Kaine. Until now, Virginia has been a leader in recognizing the importance of parent/school partnerships.	
	1 Cit 1 Par (2)	Oppose any changes that would remove or limit parent involvement in the child's education.	
<b>Regulations Revision Process</b> (21 comments)	2 Adv 3 Cit 1 Gen Ed 8 Par 1 Sped Tch (15)	Generally opposed to proposed changes and support retaining existing regulations. Rationales: <ul style="list-style-type: none"> <li>• Opposed to changes that would reduce services to students with disabilities.</li> <li>• It is a waste of resources to "fix" something that is not "broken."</li> <li>• Proposed changes would move Virginia "back."</li> <li>• The proposals infringe on the rights of children.</li> <li>• Parents are still trying to become acclimated to the current special education process.</li> </ul>	The Board of Education appreciates the public's significant participation in the public comment process, and will carefully review and consider each comment as it makes final determinations regarding the final regulations to ensure that students with disabilities in Virginia are appropriately served.  VDOE agrees with the recommendation to develop a contemporaneous Parent Resource Guide and will takes steps to do so.
	1 SSEAC (1)	Recommends that VDOE develop and issue a Parent's Resource Guide to coincide with the release of the regulations.	The determination regarding whether to use "shall" versus "must" was determined in accordance with guidance from the Virginia Register of Regulations regarding the format for Virginia Regulations.

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests replacing “shall” with “must” to comply with the federal regulations.	A Stakeholder’s Group was convened in December 2006 to provide feedback to the Board of Education regarding the drafting of the regulations. This group included parents, educators, state agencies, special education attorneys and parent attorneys. The comments of this group, along with the concerns raised during the NOIRA public comment period, were strongly considered during the drafting of the proposed regulations. Subsequent public comment has guided the revision process regarding the final regulations, including significant participation by the SSEAC.
	2 Par (2)	Concerned about the level of participation by constituency groups (parents, advocacy groups, teachers, etc.) in the development of the proposed regulations. Recommended a parent advisory component in the development.	
	1 Par (1)	Recommends the Board of Education consider the impact of the proposed changes on students who receive special education services outside of the school setting.	
	1 Cit (1)	Supports all Town Hall comments.	
<b>Alignment with other regulations and statutes</b>  (117 comments)	3 Cit 2 Guid 1 LEA Gen 1 Par 1 Prin 1 Psy 1 SLP 32 Sped Adm 11 Sped Tch 3 Sup (56)	Support the proposed language that aligns the special education regulations to the goals/provisions of IDEA and NCLB to ensure accountability and a focus on instructional outcomes.	The language of IDEA 04 and its federal implementing regulations were aligned with NCLB, placing increased emphasis on student achievement and school accountability. The Board of Education recognizes the importance of such an alignment with NCLB and has included language to this effect in the development of the proposed special education regulations.  The proposed regulations continue to ensure complete parent participation in all aspects of the special education process.  Efforts have been made to ensure clarity regarding the alignment of these final regulations and other state and federal mandates.
	1 Cit 1 LEA Gen 1 Par 6 Prin 1 Psy 1 SLP 33 Sped Adm 11 Sped Tch 3 Sup (58)	Support the proposed language that promotes a unified system of education and collaborative instructional services, uniting general and special education students to provide effective and consistent instruction.	

Issue	Source	Comments	VDOE Response
	1 Cit 1 Par (2)	Suggest that NCLB places a high value on parent participation. Therefore, weakening parental participation in education decision making is inconsistent with NCLB.	
	1 Sped Tch (1)	Recommends clarification regarding proposed regulation changes that minimize the number of rules and policies that must meet federal guidelines regarding staffing requirements, school-level systems designed to enable children with disabilities to meet the challenging state achievement standards and to new regulations for Deaf Education Teacher Certification.	
<b>Exceeding Federal Regulations</b>  (644 comments)	3 Adm 12 Prin 3 Sped Adm 1 Sped Tch (19)	Support minimizing the number of rules, regulations, and policies to which Virginia's local education agencies and schools are subject under federal statute and regulations.	In order to limit unnecessary requirements while also protecting the rights of parents and children, the Board of Education eliminated several Virginia specific requirements. With local accountability to ensure that students with disabilities participate in the general education curriculum and on standardized tests alongside peers without disabilities, the Board minimized procedural requirements to allow LEAs the flexibility to use staff and other resources efficiently and flexibly to meet accountability expectations.
1 AO 27 Cit 1 LAC 19 Par 1 PTA 1 SLP (50)	Support exceeding federal language. While the federal language doesn't encourage states to go beyond the federal regulations, it is not prohibited. States can exceed federal regulations, thus allowing Virginia-specific rights.		
5 Adv 10 AO 291 Cit 1 MD 2 Int 73 Par 2 PT 1 PTA 1 SLP 2 Stu (388)	Suggest that states can and do regularly exceed federal regulations, so minimizing state regulations cannot mean the elimination of Virginia-specific rights that are currently guaranteed.		
1 AO 1 Par (2)	Assert USDOE's intent in 300.199 is to clearly distinguish federal obligations from those that are state or locally imposed. States should not be excessive in their additional requirements.		
1 AO (1)	Suggests that the federal regulations do not discourage States from developing beneficial programs or establishing rules that best serve the needs of children with disabilities. USDOE "is in no way attempting to reduce State input or State		

Issue	Source	Comments	VDOE Response
		practice in this area."	
	1 LEA 2 LEA Gen 1 Par 12 Prin 11 Sped Adm 2 Sped Tch 1 SW  (30)	Support revisions that clarify and reinforce IDEA 2004 and generally supports the proposed regulations in that they do not exceed federal regulations.	
	2 Adm 1 Att 12 Cit 7 Gen Ed 1 Guid 10 LEA Gen 1 OT 5 Par 2 PO 1 PRC 11 Prin 1 Psy 1 PT 13 SLP 44 Sped Adm 38 Sped Tch 4 Sup  (154)	Oppose additional requirements added by Virginia, thus supporting a policy of not exceeding federal laws and regulations.	
<b>Foreword Content</b>  (3 comments)	1 Priv  (1)	Opposes the direction taken with the changes in the regulations, suggesting that it moves the special education system closer to a system in which all of the power rests with the LEAs. Suggests that parents already feel powerless and are intimidated by the jargon and the lengthy regulations and process. Also suggests that these new regulations would make it more difficult for parents to adequately advocate for their child. Suggests that while LEAs want to provide appropriate services, as the financial resources continue to shrink, these regulations would make it easier for LEAs to choose the easier route of providing limited or no supports.	In order to respect the intent of the IDEA to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education carefully considered those areas where Virginia regulations have typically exceeded the federal regulations and proposed several changes which do not interfere in the parents' right to advocate for their children. Mediation, complaints and due process hearings continue to be available as dispute resolution options.  VDOE does not believe that it is appropriate to include such detailed language in the Foreword to these regulations. However, VDOE agrees that such clarity may be needed and will consider the recommended language in a subsequent guidance document and will recommend additional language to the Preamble.
	1 SSEAC  (1)	Expand the Foreword to include information that sets the stage for the people who will need access to the regulations. This would include an overview of the regulations, written in easy to access language; IDEA 2004 language including an emphasis on "high expectations" and "educating children in the regular classroom so they can meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent	

Issue	Source	Comments	VDOE Response
		possible;" information about best practices (with policy and guideline documents since they change over time); IDEA purpose language, especially the provision that special education services should be designed to meet students' unique needs and prepare them for further education, employment and independent living. Including this language would provide clarification and background information with minimal fiscal and administrative impact.	
	1 Sped Adm (1)	Supports the direction taken with the proposed regulations.	
<b>Definitions – Age of Eligibility</b>  8 VAC 20-81-10  (1 comment)	1 Sped Adm (1)	Opposes allowing a student who has not reached their 22nd birthday before September 30 to remain in school for the year. It exceeds federal requirements and places an undue burden on high schools.	This provision is in line with Virginia's long-standing practice regarding these students, and it was inserted for clarity. This practice ensures a smoother transition for these students to post-secondary activities.
<b>Definitions/Eligibility – Autism</b>  8 VAC 20-81-10  8 VAC 20-81-80 L.  (835 comments)	18 Adv 21 AO 2 Att 474 Cit 2 EO 2 Int 2 LAC 1 LEA 1 MD 156 Par 2 PO 2 PT 2 PTA 3 SLP 1 SOP 1 Sped Adm 3 Sped Tch 3 Stu 1 Sup  (697)	Oppose including any eligibility criteria that is more restrictive than those defined in the federal regulations and which take away the flexibility for LEAs to make individual eligibility decisions, and cause some children to be inappropriately identified under other eligibility categories. The proposed VA regulations have improperly substituted the word "diagnosed" for "identified," since LEA staff are not qualified to make medical diagnoses and are not qualified to use the DSM which is for medical diagnoses. DSM is also too narrow for educational purposes and may require a medical diagnosis.	<p>The proposed definition does not limit an LEA from identifying a child who manifests the characteristics after age 3. It merely indicates that the characteristics are "generally evident before age 3."</p> <p>To ensure greater consistency in the identification of students with autism, eligibility criteria were included. While the DSM is a well-accepted set of standards, the VDOE agrees that this reference should not be included and will recommend its removal to the BOE.</p> <p>VDOE recognizes that the term "diagnosed" has mistakenly been substituted for the term "identified" in the definition of autism at 8 VAC 20-81-10. VDOE will recommend this correction to the BOE.</p> <p>Creating an advisory group other than the eligibility group to determine autism criteria would be redundant and is not advisable.</p> <p>VDOE will recommend to the BOE revised language to enhance clarity of the criteria.</p>
	3 Adv 6 AO 2 Att 15 Cit 1 MD 28 Par 1 PT 1 SLP 2 Sped Adm 2 Stu	Suggest amending the definition of autism to use "developmental <u>spectrum</u> disability." Also suggests adding, "Difficulties in abstract thinking, flexible thinking, social awareness and judgment may be present as well as perseverative thinking. Delays in fine and gross motor may also be present. The order of skill acquisition frequently does not follow normal developmental patterns." Suggest deleting, "A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied." Further suggests that these changes be framed as characteristics on the autism spectrum rather than criteria.	The federal language regarding "A child who manifests . . ." is included in this provision.

Issue	Source	Comments	VDOE Response
	(61)		
	4 Adv 64 Cit 7 Par (75)	Support definition consistent with federal regulation which states, "A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied."	
	1 Par (1)	Suggests early intervention for children with autism.	
	1 Par (1)	Suggests the creation of an advisory committee with extensive input from any parent with an autistic child who is interested in contributing information because they are the only people who truly understand autism.	
<b>Definitions - Caseload</b> 8 VAC 20-81-10 (14 comments)	3 AO 1 Att 1 Gen Ed 1 LEA Gen 2 Par 1 PO 2 SLP 2 Sped Tch (13)	Support revising the definition of caseload to state the following: Caseload means the total number of students whose individualized education plans are managed by special education personnel. Managing a caseload means ensuring evaluations and reevaluations are completed in a timely manner, and IEPs, including functional behavioral assessments and behavior intervention plans, are written, implemented, and revised in a timely manner." The current proposed definition is confusing, and could apply only to those special education students who are served by a special education teacher in a classroom. The definition should reflect current practice.	The LEA determines the responsibilities of special education teachers, assistant principals, and other professionals who may be assigned functions under the special education process. As such, it is not advisable to regulate the specific responsibilities related to a teacher's caseload other than the number of students for which he/she has for teaching.
	1 SLP (1)	Supports proposed revision to the definition of caseload and believes it should apply to related service providers as well as special education teachers.	
<b>Definitions - Change in Placement</b> 8 VAC 20-81-10 (55 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding, "Any change in setting for a student receiving special education that does not replicate all elements of the educational program of the student's previous setting" as this would bring the definition in line with case law from the 4 <sup>th</sup> Circuit Court of Appeals on what constitutes a change in placement. A.W. v. Fairfax County School Board, 372 F.3d 674 (4 <sup>th</sup> Cir. 2004).	VDOE will recommend additional language consistent with the 4 <sup>th</sup> Circuit's ruling. No additional changes are required.
	1 Att (1)	Suggests adding definitions for "change in placement" and "change in placement for discipline" so that they reflect the change in school assignment is not a change in placement.	

Issue	Source	Comments	VDOE Response
<b>Definitions - Child Study Committee</b> 8 VAC 20-81-10 (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Oppose proposed elimination of child study committee and suggests retaining this definition.	Under the proposed regulations, each LEA would have responsibility for developing a procedure for processing referrals within the regulatory frameworks set forth in these proposed regulations. Including a definition, therefore, would not be appropriate.
<b>Definitions - Child with a Disability</b> 8 VAC 20-81-10 (53 comments)	6 AO 2 Att 9 Cit 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (52)	Suggest that Developmental Delay and Severe Disabilities be restored and remain as they appear in the current VA regulations and in this definition.	Since there is no longer a separate teacher licensure requirement for severe disabilities and because there is no such term included in the federal regulations, VDOE does not recommend including severe disabilities in the definition of Child with a Disability. Students previously identified as having a severe disability will likely be eligible either under the category of multiple disabilities or one or more of the other categories.  VDOE will recommend including developmental delay in the definition as it relates to the requirements of 8 VAC 20-81-80 N.
<b>Definitions – Consent</b> 8 VAC 20-81-10 (2 comments)	1 Par (1)	Opposes the additional standard of consent that allows for an agreement that is not in writing. Suggests that to avoid conflicts, an agreement should be in writing.	Consistent with the federal regulations, consent is in writing. Agreement is included since the federal regulations allow for agreement in certain cases.
	1 SLP (1)	Opposes changes to the definition of parent consent. Suggests that it remain as it is currently defined.	
<b>Definitions – Consultative Services</b> 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests adding a definition for consultative services which would provide clarification (i.e., when a general education teacher or special education aid consults with a special education teacher and then provides instruction to a student). These services are not identified in the proposed regulations.	LEAs use different terms for specific services and implement services differently in order to provide FAPE. It would be inappropriate to regulate the strategies that LEAs may use for providing services.
<b>Definitions – Continuum of Services</b> 8 VAC 20-81-10 (1 comment)	1 SLP (1)	Suggests that this term be defined in the regulations.	Continuum of services is a term that reflects a variety of options related to least restrictive environment and is detailed at 8 VAC 20-81-130. VDOE does not recommend that it be included separately in the definitions section due to its applicability to LRE.

Issue	Source	Comments	VDOE Response
<b>Definitions/Eligibility – Deafness/Hearing Impairment</b>  8 VAC 20-81-10  (56 comments)	1 Par (1)	Suggests that the definition of hearing impairment be expanded to include children with impaired neural function of the audition system. In VA, these children are typically identified under other categorical labels that obscure the nature and impact of the disability.	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included in 8 VAC 20-81-80, "Eligibility," but not in the definition. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.  The definitions used in the regulations are consistent with federal requirements.
	1 Sped Adm (1)	Opposes the proposed regulation that discriminates the two groups because this serves to cause undue anxiety for parents and staff, and confusion for eligibility committees. The appropriate label and eligibility criteria should be based on students who are deaf/hard of hearing."	
	7 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (54)	Oppose the use of criteria beyond the federal definition and suggests that LEAs are not medical professionals and should not attempt to diagnose deafness. Also oppose that only bilateral hearing loss is addressed and unilateral hearing loss is not addressed.	
<b>Definitions/Eligibility – Developmental Delay</b>  8 VAC 20-81-10 8 VAC 20-81-80 N.  (1170 comments)	3 Adm 1 Cit 1 LEA 3 LEA Gen 2 PO 23 Prin 32 Sped Adm 17 Sped Tch 1 SW (83)	Support proposed revision of "Developmental Delay" which limits the age of DD to age 2-5 and permits LEAs to include DD as one of the disabilities when determining whether a preschool child age 2 by September 30 to 5 inclusive is eligible for special education and related services.	Based on analysis of December 1 Child Count from 2005 and 2006, the Board of Education proposed narrowing the age range for Developmental Delay to ages 2 to 5 inclusive. Virginia has experienced a disproportionate number of minority students (primarily African-American) ages 6 to 8, inclusive, being identified as having a Developmental Delay. To allow the use of developmental delay for school age students may: <ul style="list-style-type: none"> <li>continue to result in a higher number of minority students being identified as needing special education and related services due to the broad interpretation of the category, and</li> <li>result in the identification of school-age students from low-income families whose lack of experience would result in measured delays but do not have disabilities.</li> </ul> The <i>Code of Virginia</i> has required special education for students with disabilities from age 2 since 1972. It would require a revision in the <i>Code of Virginia</i> to change this mandate.
	1 AO (1)	Opposes additional eligibility criteria.	
	20 Adv 39 AO 9 Att 2 Brd 560 Cit	Oppose the limitation of ages 2 to 5. Reasons cited included: <ul style="list-style-type: none"> <li>this is not the solution to disproportionality;</li> <li>it may not be possible to make a definitive diagnosis at age 5;</li> <li>the use of DD is important for young children who benefit from early intervention but are not easily categorized;</li> </ul>	

Issue	Source	Comments	VDOE Response
	1 Con 1 CSB 5 EO 8 Gen Ed 1 Gen Tch 1 Guid 2 Int 1 ITC 1 IA 3 LAC 3 LEA Gen 3 MD 1 OT 328 Par 3 PO 2 Prin 1 Priv 8 Psy 4 PT 4 PTA 10 SLP 1 SOP 11 Sped Adm 17 Sped Tch 1 SSEAC 6 Stu 1 Sup 1 SW (1059)	<ul style="list-style-type: none"> <li>it is not always clear at an earlier age when the student struggles to acquire skills and that if DD is not an option for older students, there will be more paperwork and more meetings as regular education teachers struggle to serve these students;</li> <li>there is more disproportionate representation among MR category and this will increase that;</li> <li>identifying a learning disability before 8 or 9 years old would be as difficult as trying to identify language impairments in a 6 month old child;</li> </ul>	
	1 Sped Adm (1)	Supports the use of developmental delay if children have significant impairments based on standardized testing and test definitions of significant delay. If definition is watered down (using less specific criteria not grounded in standardized testing), children without "disabilities", but whose parents want some sort of enrichment, will be identified.	
	3 Adv 5 AO 1 Att 5 Cit 10 Par 1 Stu (25)	Applaud the BOE for continuing to extend DD to age two but oppose the proposed change to age 5 and suggests using DD through age 9.	
	1 Par (1)	Supports federal regulations for early intervention for children in K-12 to address disproportional concerns.	

Issue	Source	Comments	VDOE Response
<b>Definitions – Due Process Hearing</b> 8 VAC 20-81-10 (1 comment)	1 Par (1)	Opposes VDOE’s attempt to “write themselves out of any liability” by stating that a “due process hearing means an administrative procedure . . . that arises between a parent(s) and a local educational agency.” The federal regulations refer to “a public agency.” Suggests rewriting the provision to state, “Due Process hearing means an administrative procedure . . . that arises between a parent(s) and either a local educational agency or the State Educational Agency.”	The federal requirements are for the primary purpose of resolving conflict between the parent and the local educational agency. Language is consistent with previous state special education regulations and current federal requirements.
<b>Definitions/Eligibility - Emotional Disturbance</b> 8 VAC 20-81-10 (788 comments)	11 Adv 20 AO 3 Att 583 Cit 2 Int 1 LAC 1 LEA 1 MD 1 OT 146 Par 1 PO 2 PT 4 PTA 3 SLP 1 SOP 2 Sped Tch 1 SSEAC 5 Stu (788)	Support using the term “Emotional Disability” rather than “Emotional Disturbance.”	The term emotional disturbance is the term used in the federal regulations. VDOE agrees with these comments, however, and will recommend a change to the BOE.  Additionally, VDOE will recommend retaining the phrase “that adversely affects a child’s educational performance.”
<b>Definitions - Exceptional Circumstances</b> 8 VAC 20-81-10 (1 comment)	1 Par (1)	Supports including a definition for clarification.	Exceptional circumstances cannot be defined since it would depend on the nature of the specific situation and the standard of reasonableness would apply.
<b>Definitions - Functional Behavioral Assessment</b> 8 VAC 20-81-10 (916 comments)	12 Adv 16 AO 5 Att 606 Cit 1 EO 2 Int	Oppose permitting FBA to be only a review of existing data without parental input. The definition should require an FBA be an evaluation that consists of a systematic collection and analysis of direct and indirect data that may include a review of existing data.	Since the IEP team determines the parameters of the FBA, the parent is an essential part of the process. Specific data to be collected or used as the basis of the FBA is the decision of the IEP team and based on the specific behavior(s) of concern. If the IEP team determines that appropriate data exists, it would be inappropriate to require additional data collection. If the FBA

Issue	Source	Comments	VDOE Response
	2 LAC 1 LEA Gen 1 MD 1 OT 167 Par 1 PO 2 PT 2 PTA 3 SLP 4 Sped Tch 3 Stu (829)		is not a review of existing data conducted at an IEP meeting, parental consent is required for the assessment. This position is in concert with USDOE's interpretation of these requirements. VDOE will recommend added language to include " or new testing data as determined by the IEP team," and modify "be" to "include."
3 Adv 10 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 42 Par 1 PO 1 PT 2 Stu (80)	Suggest adding the language, "an evaluation with parent participation" to ensure that this is treated as an evaluation with appropriate parent involvement. Referenced Letter to Scheinz from US DOE OSEP. Further suggests "may include a review" rather than "may be".		
1 SSEAC (1)	Supports the proposed definition with a request to include language, ". . . may be a review of existing data . . . or new testing data as may be required."		
1 Par (1)	Opposes FBA without parental input.		
1 AO (1)	Opposes the proposed regulations that allow an FBA to be a review of existing data. Suggests that it should evaluate the child in all settings throughout the school day.		
1 AO 1 Sped Tch 1 Stu (3)	Suggest that the definition of FBA be defined as an evaluation since it is used to seek the underlying cause(s) of the misconduct and should have all of the requirements of an evaluation associated.		
1 AO (1)	Opposes an FBA being simply a review of existing data, and supports that FBAs be conducted by a professional behavioral specialist which can identify the triggers to negative behaviors.		

Issue	Source	Comments	VDOE Response
<b>Definitions – Homeless Children</b>  8 VAC 20-81-10  (1 comment)	1 AO  (1)	No change is recommended for the definition included in the proposed regulations.	The language included refers to the requirements of the McKinney-Vento Homeless Assistance Act and reflects the requirements of that legislation.
<b>Definitions - Home tutoring</b>  8 VAC 20-81-10  (1 comment)	1 Sped Adm  (1)	Suggests clarifying home tutoring and how it is different from home instruction.	This term, as well as home instruction, is included in the <i>Code of Virginia</i> , therefore, further clarification is not necessary. However, home tutoring assumes that someone other than the parent is providing the instruction while home instruction assumes that the parent provides the instruction.
<b>Impartial hearing officer</b>  8 VAC 20-81-10  (1 comment)	1 AO  (1)	Opposes the deletion of this term from the proposed regulations and opposes the replacement with special education hearing officer. Suggests that it be kept as it is.	VDOE will recommend this change to the BOE, however, the term "special education" will remain in order to distinguish the special education hearing officer from the Supreme Court of Virginia's general hearing officer list.
<b>Definitions - Implementation Plan</b>  8 VAC 20-81-10  (53 comments)	3 Adv 6 AO 2 Att 13 Cit 25 Par 1 PT 1 SLP 2 Stu  (53)	Oppose the proposed deletion of the implementation plan as a requirement for LEAs.	Implementation plan was not included to avoid the unnecessary paperwork associated with a request for a due process hearing that is either withdrawn or found for the LEA. VDOE will suggest revising, however, to include an implementation plan in these cases where the hearings have been fully adjudicated, and reinsert the term in the "Definitions."
<b>Definitions – Inclusion</b>  8 VAC 20-81-10  (1 comment)	1 SLP  (1)	Suggests that the regulations identify standards for the number allowed in an inclusion classroom and a definition for inclusion and continuum of services. Suggests that inclusion make up no more than a third of a class.	Since "inclusion" is not a term used in the federal regulations, it is not appropriate to include it in these regulations. Likewise, it is not appropriate for the regulations to include requirements for the strategies an LEA uses to provide services to students with disabilities in general education settings.
<b>Definitions – Initial Placement</b>  8 VAC 20-81-10  (1 comment)	1 Par  (1)	Opposes removal of the reference to initial placement by the LEA and private school program, and this is counter to the requirements regarding continuum of alternative placements. Proposes that the private school program continue to be included.	This additional definition is not necessary since appropriate procedures are included for an initial eligibility and placement. Other than those procedures, there is no reason to differentiate the initial placement.

Issue	Source	Comments	VDOE Response
<b>Definitions - Interpreting Services</b>  8 VAC 20-81-10  (114 comments)	1 Par  (1)	Suggests broadening interpreting services to include "intervenors."	The proposed provisions are consistent with IDEA and Virginia's licensure provisions. VDOE will suggest, however, including language to clarify the use of interpreting services for students who are not deaf or hard of hearing.
	6 AO 1 Att 1 Cit 1 EO 1 LAC 18 Par 1 PO 1 SLP 1 Sped Tch 1 Stu  (32)	Oppose limiting the use of interpreting services to students who are deaf or hard of hearing. They should be available to other students who need sign language to communicate such as students with Oral Motor Apraxia and Down Syndrome.	
	5 AO 1 Att 1 Cit 1 EO 1 LAC 5 Par 8 Par 1 Par 1 PO 1 SLP 1 Sped Tch 1 Stu  (27)	Oppose the deletion of language that defined interpreting services as "translating from one language to another" and suggest that this is necessary for those children who use oral interpreting and who communicate via translating from one language to another.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 2 Stu  (53)	Suggest changing the proposed definition to exclude "as used with respect to children who are deaf or hard of hearing" and adding "translating from one language to another (e.g., sign language to spoken English), oral interpreting and . . ." Suggest that there are children who are not deaf or hard of hearing (i.e., oral motor apraxia, Down syndrome) who utilize interpreting services as their main source of communication.	
	1 Att  (1)	Supports the change in definition.	
<b>Definitions - Level 1 Services</b>	3 Adv 11 AO 1 Att	Suggest retaining current definition which includes "and related services." Further suggest that it is necessary because it clarifies that children receiving Level 1 services may also be receiving related services.	Level 1 services are defined by the instructional services provided by a special education teacher because of the funding mechanism that provides state funding to LEAs. Level 1 and

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-10 (83 comments)</p>	<p>14 Cit 1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 2 SLP 1 Sped Tch 3 Stu (80)</p>	<p>Oppose the use of only special education to calculate the amount of time a student's instructional day is spent receiving special education services. Suggest adding the phrase "and related services" in order to capture the total amount of time a child receives services.</p>	<p>level 2 services do not include related services personnel since the services provided by related services personnel do not apply to the funding of teachers. The services provided by related services personnel also do not affect the responsibilities of the special education teacher providing the service.</p>
<p><b>Definitions - Limited English Proficient</b>  8 VAC 20-81-10 (1 comment)</p>	<p>1 Att (1)</p>	<p>Suggests adding the word "or" between items 3.a. and 3.b. If items 3.c. and 3.d. modify only 3.b., they should be renumbered.</p>	<p>VDOE agrees and will recommend this suggestion to the BOE.</p>
<p><b>Definitions/Eligibility - Mental Retardation</b>  8 VAC 20-81-10 8 VAC 20-81-80 P. (966 comments)</p>	<p>9 Adv 30 AO 7 Att 592 Cit 1 EO 2 Int 2 LAC 1 LEA Gen 1 LEA 2 MD 1 OT 185 Par 1 PO 3 PT 3 PTA 3 SLP 3 Sped Adm 2 Sped Tch 4 Stu (852)</p>	<p>Support using the term "Intellectual Disability" rather than "Mental Retardation" or "Cognitive Disability."</p> <p>Oppose the use of terms, "educable" and "trainable" and supports the use of</p>	<p>The term mental retardation mirrors the federal regulations. The 2008 Session of the Virginia General Assembly enacted legislation that requires that the terms "mentally retarded" and "mental retardation" be replaced with the term "intellectual disability" throughout the Code of Virginia. The provisions of this act shall not become effective unless reenacted by the 2009 Session of the General Assembly.</p> <p>VDOE agrees with these comments, however, and will recommend this revision to the BOE.</p> <p>To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.</p> <p>Additionally, VDOE will recommend retaining the phrase "that adversely affects a child's educational performance."</p>

Issue	Source	Comments	VDOE Response
	<p>(5)</p> <p>7 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (55)</p>	<p>"mild, moderate, and significant."</p> <p>Oppose the use of criteria beyond the federal definition and also suggests that LEAs are not medical professionals.</p> <p>Suggest using the definition from the American Association on Intellectual and Developmental Disabilities which states, "means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before the age of 18."</p>	
<p><b>Definitions – Music Therapy</b></p> <p>8 VAC 20-81-10</p> <p>(3 comments)</p>	<p>1 MT 2 Par (3)</p>	<p>Suggest adding a new definition, Music Therapy which means services provided by a Board Certified Music Therapist and includes: 1. Assessing needs, developing individualized goals and designing and implementing music interventions to address academic, cognitive, behavioral, social, and physical needs; 2 Developing adaptive music strategies to encourage a child's participation in the school environment; and 3. Collaborating with teachers and other staff on ways to utilize music therapy techniques to set behavioral expectations and maintain structure for students.</p>	<p>As with many other related services personnel, such as OTs and PTs, LEAs may use a music therapist locally to provide services, but would need to ensure that whoever provides a related service has met appropriate requirements to provide the services. VDOE does not believe it is necessary to regulate this area.</p>
<p><b>Definitions – Nonacademic Settings</b></p> <p>8 VAC 20-81-10</p> <p>(1 comment)</p>	<p>1 Par (1)</p>	<p>Suggests including a definition for "nonacademic settings" to add clarity since it is not clear to many how the non-academic provision works. This is a provision that has been inconsistently implemented in a number of LEAs. From the federal regulations is language not included in the proposed regulations.</p>	<p>Nonacademic settings are different for different students and could include any setting within the school. As such, it is the responsibility of each LEA to determine the nonacademic settings available to students and apply the standard to ensure that students are included, if appropriate.</p>

Issue	Source	Comments	VDOE Response
<b>Definitions/Eligibility – Orthopedic Impairment</b> 8 VAC 20-81-10 (5 comments)	2 Sped Adm 1 Sup (3)	Oppose the removal of the phrase, “adverse effect of educational performance in the area of “from the current definition as it is not consistent with other regulatory definitions as its inclusion provides clarity and lessens the likelihood of misinterpretation.	As with the definitions of other disabilities included in the proposed regulations, VDOE will recommend as appropriate including language indicating that it must have an adverse effect on educational performance.  The term is consistent with the federal regulations.
	1 AO 1 Par (2)	Suggest the use of “physical disability” rather than orthopedic impairment.	
<b>Definitions/Eligibility - Other Health Impairment</b> 8 VAC 20-81-10 8 VAC 20-81-80 Q. (143 comments)	3 Sped Adm (3)	Oppose the use of DSM for diagnosis since not every child who meets these criteria requires special education.	To ensure greater consistency in the identification of students with Other Health Impairments, eligibility criteria were included. The DSM is a well-accepted set of standards. The proposed regulations not only require the identification of a disability but also the determination that special education is required. Examples used are consistent with federal requirements.  VDOE will recommend retaining the phrase “that adversely affects a child’s educational performance.”  While the DSM is a well-accepted set of standards, the VDOE agrees that this reference should not be included and will recommend its removal to the BOE.
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the use of criteria beyond the federal definition and also suggests that LEAs are not medical professionals and cannot diagnose medical conditions. Oppose exclusion of ADD from this section.	
	1 Sup (1)	Opposes use of DSM in eligibility criteria for OHI as related to ADHD since OHI encompasses more than ADHD as possible disorders within the OHI category.	
	1 AO 1 Par 1 Psy (3)	Oppose additional eligibility criteria.	
	1 Sped Tch (1)	Suggests that criteria for OHI are needed because it appears to be a “catch all” category for students who should have a 504 plan.	
3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC	Suggest retaining arthritis and tuberculosis on the list of examples.		

Issue	Source	Comments	VDOE Response
	1 MD 1 PO 38 Par 1 PT 1 SLP 1 Sped Tch 2 Stu (78)		
	2 Sped Adm 1 Sup (3)	Oppose the proposed removal of the phrase, “adverse effect of educational performance in the areas of . . .”	
	1 Par (1)	Suggests that the definition be revised to “that is due to chronic or acute health problems such as <u>but not limited to</u> ” before the listing of examples to ensure that relevant conditions can be included.	
<b>Definitions – Parent</b> 8 VAC 20-81-10 ( 147 comments)	1 Adv 5 AO 1 Att 1 Cit 1 ITC 16 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (29)	Oppose exceeding language in the federal definition and suggest deleting language references the parent(s)’ authority to make educational decisions being extinguished, the child being in permanent foster care, and the foster parent having an on-going long term relationship with the child and willing to make educational decisions and has no interest that would conflict with the interest of the child.	The additional language was used to provide clarification on who can act as a parent in Virginia, and to include state requirements, as well as FERPA provisions. The language complies with federal requirements.
	1 AO (1)	Opposes the limitations imposed with the proposed regulations regarding when a foster parent can act as a parent. Asserts that the federal regulations are less restrictive, thus allowing foster parents to act as parents when the biological or adoptive parents are not acting as parents. Also, the federal regulations protect biological and adoptive parents’ rights by ensuring that they will be the parent when they act as parents. Current language is confusing and school staff, foster parents, and social workers from LEAs have reported that they do not understand the provision.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP	Suggest adding language to the definitions, thus stating, “or a judicial decree or order has identified another specific person under subdivision 1.a. through 1.e. to make educational decisions on behalf of the child” since the new federal definition protects biological and adoptive parents’ rights by ensuring that they will be the parent when they act as parents.	

Issue	Source	Comments	VDOE Response
	2 Stu (54)		
	3 Adv 7 AO 3 Att 14 Cit 1 MD 28 Par 1 PT 2 Stu (59)	Suggest amending the proposed definition to delete language pertaining to foster parents and suggests incorporating all of the federal definition. The proposed regulations are too limiting and confusing.	
	1 Sped Adm 1 LEA 1 PO 1 PTA (4)	Support proposed changed in definition of parent.	
<b>Definitions – Physical Therapy</b>  8 VAC 20-81-10  (1 comment)	1 LEA Gen (1)	Suggests replacing the proposed definition for physical therapy with the definition for physical therapy from the OT/PT Handbook for Public Schools in Virginia.	The definition used in the proposed regulations is consistent with other parts of the Code of Virginia and federal regulations. The handbook is intended to provide more guidance and is not regulatory.
<b>Definitions – Placement</b>  8 VAC 20-81-10  (1 comment)	1 Par (1)	Suggests clearly defining the term, “placement” particularly as it relates to parentally placed students when FAPE is an issue.	VDOE does not believe additional language is needed.  Factors related to parentally placed children are sufficiently obtained at 8 VAC 20-81-150.
<b>Definitions – Private School Children with Disabilities</b>  8 VAC 20-81-10  (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest expanding the definition to include children ages 3 – 5 who are placed by their parents in private school that do not qualify as elementary schools. Since most private preschools are not in elementary schools, without this change, their students may not qualify for any services that may be provided under the IDEA provisions for “parentally placed private school children.”	VDOE does not believe this is necessary since the requirements for an LEA to provide a private placement are for all students who are found eligible for special education. Likewise, students whose parents place them in private schools include students from 2 – 21, inclusive. The LEA is responsible for determining whether the private school meets the definition of elementary school. (See Superintendents Memo, Interpretive, No. 1, Feb. 9, 2007)

Issue	Source	Comments	VDOE Response
<b>Definitions – Psychological Services</b> 8 VAC 20-81-10 (3 comments)	1 Att 1 AO 1 Par (3)	Suggest adding “including clinical psychological” to the definition in order to clarify that this provision includes these types of evaluations when needed. Some LEAs refuse to conduct clinical psychological evaluations despite the need for certain data in order to make specific disability identifications.	VDOE does not believe this is necessary since the evaluations would need to assess those areas required to determine eligibility for special education and related services.
<b>Definitions – Reasonable</b> 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests including a definition for clarification (ie, if 10 business days is reasonable, make it statutory).	It is not possible to define “reasonable” since this is a term used by the courts to assess what is customary for the circumstance.
<b>Definitions – Related Services</b> 8 VAC 20-81-10 (56 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the deletion of the terms transliterating and psychological counseling from the definition because it would unnecessarily limit the types of related services children with disabilities can receive.	Related services are required to include whatever services are needed for the child to access appropriate education. As such, the definition included is consistent with federal regulations.  Music therapy is included in this definition.
	1 MT 2 Par (3)	Suggest adding music therapy to the list of related services.	
<b>Definitions – School</b> 8 VAC 20-81-10 (1 comment)	1 Par (1)	Supports clearly defining the term, “school” – particularly as it related to parentally placed students when FAPE is at issue.	As applied to parentally placed students, the terms “elementary school” and “secondary school” are defined in 8 VAC 20-81-150.
<b>Definitions - Serious bodily injury</b> 8 VAC 20-81-10 (1 comment)	1 Att (1)	Suggests that the regulations include “bodily injury.”	“Serious bodily injury” is the term used in the federal regulations and the standard used for disciplinary actions under the IDEA.

Issue	Source	Comments	VDOE Response
<b>Definitions/Eligibility – Severe Disabilities Category</b> 8 VAC 20-81-10 8 VAC 20-81-80 (76 comments)	3 Adm 1 LEA 12 Prin 2 Sped Adm 1 Sped Tch (19)	Support proposed elimination of severe disabilities category.	The category, “severe disabilities” was removed since it is not used in the federal regulations. It is anticipated that students currently identified with this disability will qualify as either having multiple disabilities or another specific disability. The elimination of a teacher licensure category specifically for students with severe disabilities also contributed to the elimination of this category.  In order to be consistent, VDOE will recommend deleting reference to the “severe disabilities” category in 8 VAC 20-81-320.
	1 Cit (1)	Opposes elimination of severe disabilities category and believes this will force these students to be mixed with MR students in a catch-all class for all students with IQs below 70.	
	6 AO 2Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the deletion of the term and suggest that it is important to include because of the nature and severity of children with this disability and suggest that this “class of children” not be excluded.	
	1 Adv 1 Par (2)	Oppose changes to the definition of severe disabilities and suggest that it should remain the same.	
	1 Par (1)	Opposes the removal of the definition of severe disabilities, particularly given that it is still included in 20-81-320.	
<b>Definitions – Social Work Services in Schools</b> 8 VAC 20-81-10 (26 comments)	2 Cit 2 LEA Gen 1 Prin 1 Psy 1 Sped Tch 16 SW (23)	Suggest that the regulations need to reflect the critical role of the social worker in the eligibility process. Social workers conduct student and family assessments that are critical to the special education evaluation process such as socio-cultural and adaptive behavior assessments.	VDOE recognizes that in many school divisions, school social workers have broader authority/roles than the federal definition, such as conducting assessments and interpreting their results, because Medicaid reimbursement rules permit LEAs to use school social workers in a broader sense. Therefore, VDOE will recommend additional language be added to this provision.
	1 AO (1)	Suggests revisions to include roles of the social worker such as: conduct in-home structured socio-cultural histories; administer, score, and interpret social adaptive behavior instruments; provide intervention and prevention services; and provide case management services for initial and triennial evaluations.	

Issue	Source	Comments	VDOE Response
	1 SW (1)	Suggests that regulations specify the role of social workers to include serving as a liaison between school, home, community; serve on the school's multi-disciplinary team; provide intervention and prevention; provide academic instructional problem solving; conduct academic and behavioral observations; assist in the development of BIPs; provide initial evaluation for case management; conduct assessments; interpret social adaptive behavior measures; provide individual and small group counseling; provide crisis support; provide professional development opportunities; assist with truancy problems; collaborate with community service organizations.	
	1 SW (1)	Suggests describing the components of a socio-cultural report to include: develop a comprehensive socio-cultural assessment that focuses on the student's prenatal, developmental, medical, educational histories; adaptive behavior, and community family functioning. Also add obtaining, integrating and interpreting information about child behavior and conditions related to learning and consulting with parents, school staff, community service providers and other stakeholders to improve a student's school performance and adjustment.	
<b>Definitions - Special Education Hearing Officer</b>  8 VAC 20-81-10  (104 Comments)	3 Adv 11 AO 3 Att 23 Cit 1 EO 1 LAC 1 MD 54 Par 1 PO 2 PT 2 SLP 1 Sped Tch 1 Stu  (104)	Oppose the use of the term special education officer and supports the continued use of Impartial Hearing Officer.	The term distinguishes these hearing officers from those who hear cases from other state agencies in Virginia.  VDOE will recommend retaining the word "impartial" for clarity.
<b>Definitions/Eligibility -</b>	1 Sped Adm	Opposes defining dyslexia when other specific learning disabilities are not	Dyslexia is specifically included in the federal definition and was

Issue	Source	Comments	VDOE Response
<b>Specific Learning Disability</b>  8 VAC 20-81-10 8 VAC 20-81-80 K.  (105 comments)	(1)	defined.	expanded in the proposed regulations to clarify the meaning of the term. It is included to clarify the meaning of specific learning disability without diminishing the importance of other specific learning disabilities.  In accordance with federal regulations, the definition of a learning disability no longer requires the use of a discrepancy model but it does not prohibit this approach. VDOE is providing training throughout the state on the use of Response to Intervention as an alternative to using a discrepancy approach.  Additional clarification will be made available through technical assistance following the statewide training on Response to Intervention methods.
	1 PRC (1)	Opposes the use of the severe discrepancy model.	
	2 Sped Adm (2)	Support IDEA 2004 statement, "that the state education agency must not require the use of a severe discrepancy model; must permit the use of a process based on the child's response to scientific, research-based intervention; and, may permit the use of other alternative research-based procedures."	
	1 Sped Adm (1)	Suggests that eligibility criteria for students suspected of having an SLD needs clarification. The application of those included is unclear.	
	4 AO 2 Att 1 Cit 1 EO 1 LAC 13 Par 1 PO 1 SLP 1 Sped Tch 1 Sup (26)	Oppose the added language in the proposed regulations that references dyslexia because it conflicts with the original definition which describes a disorder in one or more of the basic psychological processes.	
	3 Adv 6 AO 3 Att 13 Cit 1 MD 26 Par 1 PT 2 Stu (55)	Suggest removing from the proposed definition references to dyslexia. This would improperly narrow the requirements, is absent from federal law, and may result in the denial of eligibility to students who have the right under IDEA and federal requirements.	
	1 LEA 1 Sped Adm 1 Cit (3)	Oppose the inclusion of an explanation of dyslexia as unnecessary and should be removed.	
	1 AO (1)	Oppose the definition which describes dyslexia, and assert that the proposed definition is too limiting and violates the federal minimum baseline because it adds additional criteria that do not exist in the federal regulations. Assert that this definition could exclude students with dyslexia when use of the federal	

Issue	Source	Comments	VDOE Response
		regulations would not.	
	2 AO 1 Att 3 Par (6)	Opposes additional eligibility criteria.	
	1 Psy (1)	Opposes the proposed language that would eliminate the measures of individual intellectual ability when determining if students are eligible for SLD because intellectual measures provide consistent norms and measures of ability and provide information of how children learn through various cognitive areas.	
	1 Par (1)	Suggests maintaining age requirements for when determining learning disabled.	
	1 Par (1)	Suggests the need for improvements in identification process of students with dysgraphia as the writing difficulties may be either language based or grapho-motoric based to eliminate the assumption that the students are not working hard enough to do their work when there is clear etiology.	
	1 AO 1 Sped Adm (2)	Oppose the expanded definition of dyslexia as the other disabilities are not as specifically defined. Propose the deletion of the paragraph containing the definition of dyslexia.	
	1 Par (1)	Suggests that language from the federal regulations be included that specifies, "(1) data that demonstrate that prior to or as part of the referral process, the child was provided with appropriate instruction in regular education setting, delivered by qualified personnel; and (2) data-driven documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.	
	1 Adv (1)	Opposes the language that states, "Dyslexia is distinguished from other learning disabilities due to its weakness . . ." This does not define SLD, but rather describes an unproven process for the remediation of only a few disorders defined by the traditional definition of SLD. Focusing on phonological awareness will result in a loss of needed services for children that require special education and related services.	
	1 Psy (1)	Suggests the definition of dyslexia be added to the proposed regulations.	
	1 Con (1)	Supports the addition of dyslexia to the definition of SLD but suggests clarifying difficulties with overall reading fluency, not just word recognition as a secondary	

Issue	Source	Comments	VDOE Response
		consequence of dyslexia.	
<b>Definitions/Eligibility – Speech or Language Impairment</b>  8 VAC 20-81-80 R.  (54 comments)	1 AO (1)  6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Opposes additional eligibility criteria.  Opposes the use of criteria beyond federal definition and suggests that LEAs are not medical professionals.	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.
<b>Definitions – Supplementary Aids and Services</b>  8 VAC 20-81-10  (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding the following language, “Supplementary aids and services include, but is not limited to: providing preferential seating; frequent breaks; extended or additional testing time; allowing tests to be dictated; a functional behavioral assessment and behavioral intervention plan; one-to-one aides; and interpreting services to students with disabilities.” Including a non-exhaustive list of examples gives guidance to schools and parents regarding the types of services that may be provided. It also brings the definition in line with the definition of related services, which has long included a non-exhaustive list of examples.	Since supplementary aids and services vary and are not intended to be a menu of selections, it is inappropriate to add the suggested language. It is the responsibility of the IEP team to determine what the child requires for supplementary aids and services in order to meet the child’s educational needs.
<b>Definitions – Timely Manner</b>  8 VAC 20-81-10  (54 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest deleting the phrase “the requirement for the National Instructional Materials Accessibility Standard” and referencing instead 8 VAC 20-81-230K since timely manner should not be limited to the use of NIMAS but tied to the provision of proper instructional materials at the same time as other children regardless of what agency is contracted or method the LEA adopts. Some needed materials may not be available through NIMAS.	This language is consistent with the federal regulations. It is the responsibility of the LEA to ensure that students have the materials needed.
<b>Definitions/Eligibility – Traumatic Brain Injury</b>  8 VAC 20-81-10	2 Sped Adm 1 Sup (3)	Opposes the removal of the phrase, “. . . adverse effect of educational performance in the areas of . . .” This is not consistent with other regulatory definitions as its inclusion provides clarity and lessens the likelihood of misinterpretations.	VDOE will recommend including language indicating an adverse effect on educational performance.

Issue	Source	Comments	VDOE Response
(3 comments)			
<b>Definitions - Unreasonable</b> 8 VAC 20-81-10 (1 comment)	1 Par (1)	Suggests including a definition for clarification.	As with the suggestion for reasonable, unreasonable is based on the circumstance and cannot be defined for these regulations.
<b>Definitions /Eligibility – Visual Impairment</b> 8 VAC 20-81-10 (56 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 2 Sped Tch 1 Stu (54)	Oppose the use of criteria beyond the federal definition and suggest that LEAs are not medical professionals.	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. The criteria do not require the LEAs to make a medical diagnosis; rather, criteria are included to assist the LEA to identify a student with a disability covered under IDEA who requires special education and related services.
1 Sped Adm (1)	Supports the level of specificity now included in the proposed definition.		
1 Par (1)	Opposes the limitation to defining as a visual acuity since it would create a situation where children will not get the services that they need to be able to access and function within the general education curriculum.		
<b>Functions of VDOE – General</b> 8 VAC 20-81-20 (329 comments)	1 Sped Adm (1)	Suggests that VDOE maintain the current date for child count reporting. Further suggests that earlier reporting (between October 1 and December 1) is a concern since school doesn't begin until after Labor Day.	The proposed provisions are consistent with the 2006 federal implementing regulations.  VDOE will recommend the date for child count data be a date certain to be determined by the Superintendent of Public Instruction or designee within the federal timeframes.  Requirements of the McKinney-Vento Homeless Act are included as outlined in IDEA and its federal implementing regulations to ensure that homeless children with disabilities are appropriately located, evaluated, identified, and served.  VDOE will recommend to the BOE that 1.e. will read “Are
1 AO (1)	No change is recommended for 6.b. which requires DOE to ensure that each local educational program for children with disabilities administered in Virginia meets the educational standards of the Virginia Department of Education. In carrying out these requirements with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.) are met.		

Issue	Source	Comments	VDOE Response
	1 AO (1)	No change is recommended for 15. A. (5) which requires representation on the state special education advisory committee of state and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Act (42 USC § 11431 et seq).	<p>receiving special education and related services . . . “ The commenter is correct in pointing out that special education and related services are services and not a location.</p> <p>The proposed regulations are consistent with federal requirements for submission of information to VDOE for the annual plan. VDOE does not believe it is necessary to collect and approve local policies and procedures since LEAs are required to comply with all state and federal requirements and they are monitored through complaints, due process hearings, and VDOE’s federal monitoring activities.</p> <p>VDOE does not believe additional language is necessary to further define the requirements that LEAs have to ensure appropriate services are available. Through its monitoring and enforcement responsibilities, however, VDOE continues to review state-wide data, and to provide technical assistance to LEAs, as appropriate to ensure that students are appropriately placed and that such programs will prepare students for post-secondary activities.</p> <p>VDOE’s monitoring and enforcement responsibilities are in compliance with IDEA and its federal implementing regulations.</p> <p>SOL and other standardized assessments may not be modified to ensure the integrity of the tests but may be administered with accommodations. Alternate assessments would provide the necessary modifications that may be needed.</p> <p>The proposed regulations are consistent with the federal requirements regarding staff training requirements. VDOE does not believe further state regulatory requirements are necessary. However, localities, depending on locally identified needs, should continue to provide appropriate ongoing training and supervision to its staff.</p> <p>In accordance with the federal regulations, and as outlined in 8 VAC 20-81-20 11 b., VDOE will continue to operate Virginia’s state complaint system.</p> <p>VDOE believes that local school divisions should be responsible for incentives for LEA personnel who demonstrate leadership in special education.</p> <p>VDOE agrees with the comment to 5. and will recommend to the BOE insertion of the recommended language in this provision.</p>
	1 AO (1)	No change is recommended for 23 which implies that data will be disaggregated to count students receiving special education who are homeless.	
	3 Adv 3 Att 11 AO 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Suggest that the language in 1.e. should read, “Receive or need special education and related services” – not “Are in special education and related services.”	
	1 Stu (1)	Supports VDOE ensuring that ED programs prepare students for graduation and college.	
	1 Stu (1)	Supports VDOE ensuring that African American students are not put in ED programs when other programs will serve them better.	
	1 Sped Adm (1)	Supports removal of the provision that requires LEAs to submit copies of their policies and procedures to VDOE for approval as it will save time and the cost of postage.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 23 Par 1 PT 1 SLP 2 Stu (52)	Suggest amending 15.b.(6) to require that the Annual Plan include “new or amendments to policies and procedures for the provision of special education and related services”. This will ensure procedural changes are appropriately crafted.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest retaining current language in 22. "including submission of revised policies and procedures for provision of special education and related services."	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Insert into 5., regarding the requirement that LEAs take steps for children with disabilities to have available a variety of programs and services that are available to children without disabilities, the words, "area served by the" to ensure consistency with the federal regulations.	
	3 Adv 3 Att 11 AO 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Under 4., the word "modifications" is deleted and should be kept to ensure that IEPs include modifications for assessments to assist children in taking assessments and progress toward goals.	
	1 Att 1 Par (2)	Support deleting provision 8 VAC 20-81-20 11. b. for consistency.	
	1 Par (1)	Supports strengthening VDOE's monitoring, enforcement and accountability responsibilities to ensure compliance with current regulations.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests the requirement for a tracking system that ensures that teachers and paraprofessionals are trained and meet qualifications to include highly qualified status; include on-going training.	
	3 Par (3)	Support requiring ongoing training for LEA personnel involved in the supervision and education of children with disabilities.	
	1 EO (1)	Recommends providing incentives to those doing what is right in their systems.	
<b>Accountability for Instruction – Assessments – General</b>  8-VAC-20-81-20  (43 comments)	1 Att (1)	Suggests that the words, “participate in” be added to the definition of Alternate Assessment.	<p>Federal regulations require that the IEP team make decisions about accountability, requiring that all students participate in the regular state tests unless they have significant cognitive disabilities and are unable to participate in statewide Standards of Learning testing, even with accommodations.</p> <p>Similarly, IEP teams are responsible for determining how a student’s progress will be monitored. Therefore additional regulatory requirements are not necessary regarding the provision of educational benefit.</p> <p>The proposed regulations are consistent with the federal requirements regarding VAAP and the need to document the decision in the IEP. VDOE does not believe further regulatory requirements are necessary.</p> <p>The Board of Education recognizes the importance of placing increased emphasis on student achievement and school accountability and has included language to this effect in the development of the proposed special education regulations.</p> <p>VDOE recognizes the importance of ensuring accountability for instruction and maintaining appropriate assessment tools that comply with the requirements of USDOE. However, VDOE does not believe additional clarification regarding this issue is required in this set of regulations.</p>
	1 Sped Adm (1)	Opposes the way that the VAAP is administered. The VAAP "continues to be a dog and pony show,' with the ASOLs often irrelevant to the student's IEP goals/objectives and the student's transition needs. It does not allow for demonstration of collaborative efforts over the course of a student's education, for example, by not allowing the use of materials from the 9th & 10th grade, even if potentially great assessment material.	
	2 LEA Gen 12 Prin 9 Sped Adm 11 Sped Tch 1 Sw (35)	Support proposed regulations, as written, because they focus on improving student achievement.	
	1 AO (1)	Supports improving communication with LEAs regarding SOLs (VSEP, VGLA), and for ensuing appropriate ways to identify students with disabilities who are passing.	
	1 Par (1)	Recommends that Virginia require LEAs to provide meaningful educational benefit that is real and measurable, instead of using general education classroom grades or passing from grade to grade as a measurement of IEP goals.	
	1 Par (1)	Suggests another alternative for assessment would be "to use normed based testing to determine if the intervention/instruction is working and each student, cognitively able, is making progress, when appropriate SOLs are failed."	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that a student should not be expected to take any test that is 2 years or more above their ability level unless there is “overwhelming evidence” that the child could pass the test. It creates esteem issues.	
	1 AO (1)	Suggests clarifying language about alternative ways to earn verified credit.	
	1 AO (1)	Suggests informing parents of the alternate assessment. Students who do not participate in the general education curriculum are failing regular SOL tests, creating a situation where they drop out of schools, or keeping the school from making AYP.	
<b>Responsibilities of LEAs and SOPs – General</b>  8 VAC 20-81-30  (58 comments)	6 AO 13 Cit 1 MD 25 Par 2 Att 1 PT 3 Adv 1 SLP 2 Stu  (54)	Support proposed language in 20-81-30 in its entirety.	Language in this section incorporates both state and federal requirements. VDOE does not believe additional clarification is needed regarding non-educational placements since this section does not address parental placements and reflects the responsibilities of LEAs. However, VDOE agrees with the comments related to the LEA’s responsibility for FAPE for children placed for non-educational reasons in an SOP as a long-term placement. VDOE will recommend additional language in this regard.
	1 Att (1)	Suggests clarifying that non-educational placements do not include parentally made placements and only include public agency placements.	
	1 VDOE (1)	Suggests that the proposed regulations distinguish that children in long-term placements will have FAPE ensured by their LEA.	
	1 VDOE (1)	Suggest deleting the words, “unless the child is in a state-operated program” under 20-80-40, 10.	
	1 VDOE (1)	Suggests that the LEA of custodial parents’ residence be required to work with the SOP when a student has been placed by the parent long-term similar to a nursing home placement. Supports having students in long-term placements being treated as all other students with long-term nursing placements.	
<b>Residency (Which LEA is responsible for FAPE?)</b>  8 VAC 20-81-30  (2 comments)	1 Sped Adm (1)	Supports the added clarification related to residency included in the proposed regulations.	The regulations combine requirements from various sections of the <i>Code of Virginia</i> and efforts were made to clarify which LEA is responsible for the education of students in various situations.
	1 AO (1)	Suggests adding into 8 VAC 20-81-30 B.2., the following language: “Children with disabilities who are homeless, including students remaining in their school of	VDOE disagrees with the recommended language change. School divisions responsible for children who are homeless in

Issue	Source	Comments	VDOE Response
		origin, in accordance with the provisions of the McKinney-Vento Homeless Assistance Act.” This will clarify that homeless students may remain in their school of origin, even when across school division lines, if in the student’s best interest.	other school divisions but wanting to remain in their school of origin will create an administrative and fiscal burden on those school divisions. Children who are homeless should receive services as proximate to where they are located.
<b>Staffing Requirements – Caseloads</b>  8 VAC 20-81-40 A. 3.  (224 comments)	1 Gen Ed (1)	Suggests that classes with students with moderate and severe disabilities be required to have paraprofessionals in order to be able meet the needs of students with disabilities such as autism, emotional disturbance, mental retardation, etc. Also suggests that students with varied level of needs (Level 1 & Level 2) need more than one teacher in a classroom to meet their needs.	VDOE does not believe further clarification is needed related to the use of “similar” and “varying”.
	1 Gen Ed (1)	Suggests that general education classes with included special education students have limits established for the number of students with disabilities that can be included.	In light of the comments received, VDOE recognizes that there may need to be a review and possible revision to the staffing ratios outlined in Appendix A, and will recommend such to the Board.
	1 Gen Ed (1)	Suggests that caseloads should not be based on real pupil teacher ratios or building averages that allow huge inequities and do not meet the needs of students with disabilities.	VDOE will recommend deletion of “severe disabilities” since this category is not included in the federal definitions.
	1 AO 1 Gen ed 1 LEA Gen 1 Par 1 PO 1 SLP 2 Sped Tch (8)	Suggest defining “similar” and “varying” achievement levels when setting limits for students in a single class period.	The proposed regulations are consistent with the federal requirements regarding staff training requirements. VDOE does not believe further state regulatory requirements are necessary. However, localities, depending on locally identified needs, should continue to provide appropriate ongoing training and supervision to its staff.
	1 Sped Adm (1)	Suggests deleting caseloads for students with Severe Disabilities since SD is no longer included.	Figure A of the 2002 Virginia Regulations has been deleted. Its intent was to align the special education regulations with regulations relative to teacher education and licensure. With the revision of those regulations, the information contained in Figure A was no longer accurate.
	1 Sped Adm (1)	Suggests caseloads using the Level I and II criteria in terms of services not location. Some thought needs to be given to the increased cost of educating children in the LRE.	
	1 Sped Adm (1)	Suggests caseloads of 40 for SLPs since they have Medicaid paperwork, and lower caseloads would help with retention of SLPs.	
	1 Sped Adm (1)	Supports decrease in caseloads for sped teachers in inclusion and co-teaching situations of no more than 16-18 students.	
	1 Sped Adm	Supports a higher number of paraprofessional staff than indicated to provide	

Issue	Source	Comments	VDOE Response
	(1)	support and services for students with significant disabilities in the general education classroom.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest changing Figure A, and Appendices 1 & 2 to include DD caseloads for children through age nine.	
	1 Sped Adm (1)	Suggests adding level II numbers for DD children ages 2-5 since there is a current movement for more time with non-disabled peers.	
	1 Sped Tch (1)	Opposes changes to preschool special education caseloads that would increase the caseloads.	
	1 AO 1 Adv 4 Cit 8 Par (14)	Oppose the proposed teacher-student ratio for Autism of 6:1 for teacher and 1 paraprofessional for every 8 children.	
	1 Sped Tch (1)	Opposes current caseload requirements and suggests a weighted system with no more than 14 weights in accordance with Appendix A, that similar and varying achievement levels be redefined, and that inclusive classes have no more than 10 student weights included.	
	1 AO 1 Att 1 Par (3)	Suggest changes to the caseload standards and that the Board move forward to make changes via the legislative process as soon as possible.	
	2 AO 1 Att 1 LEA Gen 2 Par 1 PO 3 Sped Tch 1 SLP	Suggest that language be included to address caseloads in inclusive settings since no current language is included. Suggest no more than 10 weights (as defined in Figure 2 of Appendix A) be allowed in general education classes for inclusive placements when there is only one teacher. Suggest no more than 12 weights be allowed in an inclusive setting when two teachers (one of which is a certified sped teacher in the class for at least 75% of the time) are assigned to the classroom.	

Issue	Source	Comments	VDOE Response
	(11)		
	2 AO 1 Att 1 LEA Gen 3 Par 1 PO 1 SLP 2 Sped Tch (11)	Suggest that weights be used rather than the number of students to identify caseloads and the number of students assigned to a single class period so that 14 weights would be used for similar achievement levels and 10 weights would be used for a group with varying achievement levels. Similar would mean within 2 grade levels of each other and varying would mean differences of more than 2 grade levels. Suggest also that similar achievement level be defined in the regulations to minimize varying practices among LEAs.	
	1 Par (1)	Concerned about student-teacher ratio being 15 to 1.	
	1 Par (1)	Supports the inclusion in Appendix A of a Level III category for students who need intensive 1:1 intervention outside of the general or special education class to prepare them to be included with typical peers in the regular class.	
	1 Guid 1 Sped Tch (2)	Support staffing values associated with Appendix A.	
	1 Par (1)	Supports clarifying the meaning of “collaborative inclusion and mainstream classrooms.” It is not understood the amount of time that a trained special education teacher should be in the classroom for the time stated on the IEP.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the proposed regulation at A. 1. (a) indicating that students with disabilities shall be instructed with students without disabilities. This adds clarity on instruction in the general education classroom setting.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Support the proposed regulation at A. 2. (b) relating to high qualified teachers in one or more federal core areas. This aligns with federal regulations and supports commensurate teaching standards for children with disabilities.	
	1 Par  (1)	Supports requiring disability-specific training for aides/paras with the training specific to the student that the aide/para is working with.	
	1 Par  (1)	Opposes removal of endorsement by disability in Section 40.	
<b>Staffing Requirements - General (except length of day)</b>  8 VAC 20-81-40 (3 comments)	1 Cit  (1)	Suggests that categories no longer used in the definitions should be removed from the staffing table for staff to student ratios.	VDOE will recommend to the BOE the deletion of the category "severe disabilities", because the federal regulations no longer use the term and it is not required for accounting purposes.
	1 Gen Ed  (1)	Suggests defining "knowledgeable" as it pertains to general education personnel who may implement special education services.	The term, "knowledgeable," is the language used in the federal regulations and is based on the specific student and situation.
	1 Par  (1)	Opposes proposed wording of "indirect services" because of a potential to dilute, diminish or compromise the delivery of special education services under an IEP.	The description of special education services as including both direct and indirect services is consistent with the federal regulations and guidance from USDOE.
<b>Staffing Requirements – Highly Qualified</b>  8 VAC 20-81-40 (2 comments)	2 Cit  (2)	Support the proposed regulations that eliminates separate teacher licensure requirements for MR, ED, and LD.	The Board made this change to comply with revisions to the regulations regarding teacher education and licensure.
<b>Staffing Requirements – Interpreters</b>  8 VAC 20-81-40 E. (134 comments)	10 Int  (10)	Support the use of EIPA as a valid test for qualifying educational interpreters. It is reliable and is the assessment in more than 25 states.	Local School Boards determine salaries based on a number of factors including demand, resources and competing LEAs. The Board of Education, therefore, desires not to be any more prescriptive in this area.
	1 IHE 1 Indiv 2 Int  (4)	Oppose the use of EIPA as a qualification for educational interpreters.	EIPA was suggested as an alternative for Educational Interpreters based on recommendations from public comment during NOIRA. Providing this as an option allows greater flexibility for interpreters to demonstrate their level of

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Suggests that the state provide financial support to offer salaries that will result in interest in these positions. Suggests that increased requirements will result in difficulties hiring qualified interpreters.	competency.  Federal regulations (§ 300.156) do not allow a waiver process. LEAs may need to review their recruitment procedures and salary scales for interpreters.
	4 Int 1 Par 2 Sped Adm (7)	Oppose removing the waiver process for sign language interpreters because until the pool of qualified interpreters increases, removal of the waiver process will burden school divisions by causing non-compliance and possible litigation. As long as interpreters are showing constant improvement, waivers are necessary.	The proposed regulations require a passing score on the EIPA written test as well as sets minimum scores on the EIPA performance test. Other requirements will be reviewed for possible inclusion.
	1 VDOE (1)	Suggests including a passing score on the EIPA written test along with a minimum of Level 3.5 on the EIPA performance test along with other specific requirements including those to go in effect in 2010.	VDOE recognizes that given the shortage of interpreters in the field that a “phase-in” period for the new requirements may be necessary, such that they will not be immediately effective. VDOE will recommend this to the Board.
	1 Int (1)	Agrees that educational interpreters need to be highly qualified and professional.	
	1 Int (1)	Concerned that the Cued Language Transliterators recruited and trained by LEAs using VDOE resources during the school year with the requirement that an individual already be an EI. If the proposed regulations are passed, this will lead to a shortage of Cued Language Transliterators. Proposes instituting a 3 year window to allow an individual to obtain VQAS Level III.	
	3 Int 1 Par (4)	Concerned that VQAS is considered the first option in the proposed regulations: It is a screening/diagnostic tool, not a certification of an interpreter's skills. It is geared toward community interpreting, not education. There is a version of the VQAS performance assessment that "does not meet the standards." The VQAS gives 3 scores, but it is the lowest of the 3 that is considered the score attained.	
	3 Int (3)	Support the inclusion of requirements regarding continuing education classes.	
	2 Int (2)	Support allowing 3 years to attain a VQAS Level III/transliteration skills certificate from TEC Unit/RID certification/EIPA 3.5	
	1 Int (1)	If an interpreter participates in training during a year period prior to taking the certification test, if an appropriate score is not obtained, then a waiver should not be granted.	
	1 Int (1)	Supports limiting language modes to ASL or PSE.	
	1 Int	Supports including timelines for requiring existing interpreters to meet the same	

Issue	Source	Comments	VDOE Response
	(1)	standards as newly hired interpreters.	
	1 Int (1)	Supports the inclusion of enforcement/accountability mechanisms in the regulations.	
	3 Int 1 Par (4)	Oppose the requirement that an interpreter achieve Level III within 1 year since 1 year is not usually enough time to become proficient enough to take the test. VDDHH encourages candidates to wait at least 1 year before retaking any part of the assessment, in part, to develop their skills. Support instead a 3 year requirement to pass a VQAS Level III, EIPA 3.5 or RID test.	
	3 Int 1 Par (4)	Oppose the use of the "TEC Unit": It is "virtually inaccessible and very hard to pass." It requires a minimum of 6-8 people to come to Virginia to take the test. It requires about 1 year of intense workshops to prepare.	
	1 Int (1)	Strongly supports the proposed change regarding the certification of interpreters for the Deaf and Hard of Hearing.	
	3 Int 1 Par (4)	Suggest that many of Virginia's required evaluations for educational interpreters are not appropriate assessments of the skills of educational interpreters since RID tests are expensive and geared to community interpreting.	
	3 Int 1 Par (4)	Support permitting the EIPA test for cued language, which will be ready by the end of 2008, to be considered a qualification option for cued language transliterators.	
	3 Int 1 Par (4)	Oppose the requirement that a sign language interpreter in a LEA have a VQAS II before beginning work. Interpreters from other states or coming out of Interpreter training programs do not usually have access to one of the required tests, making them unable to work in Virginia.	
	2 Int (2)	Support using the national certification test as a requirement for all interpreters. It is a generalist test that qualifies interpreters to work for any age group and with any modality.	
	1 Int (1)	Supports the following provisional standards: employees must be hired at EPI level 3.0 for a period of no more than 1 year and employees may be hired with VQAS level 3 or EIQA 4.0 level with credentials in the language modality used by child.	
	1 Cit	Oppose making Level 3 mandatory when so many interpreters are capable of	

Issue	Source	Comments	VDOE Response
	14 Int 2 Par 1 Sped Adm 1 Sped tch (19)	success without Level 3. Not permitting interpreters to be hired who do not meet this requirement will result in severe shortages in a profession where there is a scarcity.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support the proposed interpreter standards, as written.	
<b>Staffing Requirements – VI Teachers</b>  8 VAC 20-81-40  (57comments)	1 AO 5 Cit 2 DBVI 16 Par 3 Sped Tch (27)	Suggest that Appendix A include a caseload requirement for teachers of students with visual impairments.	Caseload requirements are based on the state's funding formula; they cannot be revised outside of the funding mechanism.  The Board of Education believes that DBVI is the appropriate state agency to administer and provide oversight regarding state funding for VI teachers. Therefore, it declines to pursue a transition of this authority to VDOE.
	2 Cit 2 DBVI 5 Par 1 Sped Tch (10)	Support including state funding for VI teachers under the SOQs. VI is the only special education category for which there is no maximum instructional caseload set and funded by the SOQs.	VDOE does not believe that additional clarifications are necessary.
	2 Par (2)	Support lowering the caseloads for VI teachers since too high a caseload creates a situation where services are not provided appropriately.	
	2 DBVI 4 Par 1 Sped Tch (7)	Support striking the following language from proposed regulation 8 VAC 20-81-40 A. 3. a., and 8 VAC 20-81-40 B. 2. c.: "Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired." The Code of Virginia does not grant either local school boards or DBVI the authority to determine maximum instructional caseloads.	
	2 DBVI 2 Cit 6 Par 1 Sped Tch (9)	Support transferring the responsibility for the administration of state funds that support teachers of the visually impaired from DBVI to VDOE.	

Issue	Source	Comments	VDOE Response
<p><b>Child Find (includes screenings or public awareness)</b></p> <p>8 VAC 20-81-50</p> <p>(161 comments)</p>	<p>3 Adm 12 Prin 1 Sped Adm 1 Sped Tch (17)</p>	<p>Support the proposed revision to collapse the public awareness and screening framework to a single provision and requiring LEA procedures including timelines.</p>	<p>To provide maximum flexibility to LEAs, child find requirements were collapsed wherever feasible.</p> <p>As required by federal regulations, early intervening services cannot be used to delay a needed evaluation for a child suspected of having a disability.</p> <p>VDOE will consider the development of a technical assistance document which lists all required areas to be screened. These were removed to allow for state changes without having to amend the special education regulations.</p>
	<p>1 Sped Adm (1)</p>	<p>Supports the removal of specific procedures allowing the school divisions the latitude and flexibility necessary to develop and implement procedures unique to their specific needs rather than in response to state imposed regulations which may not be easily tailored to a particular school division.</p>	
	<p>1 Sped Adm (1)</p>	<p>Supports changing the requirements for screening and the requirement for specific instruments because specific timelines for screening at the beginning of the year make service delivery cumbersome since screeners are often service providers. Additionally, students do not always respond to specific screening instruments in a manner that accurately reflects their skills.</p>	
	<p>6 AO 1 Att 2 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (29)</p>	<p>Oppose the deletion of the 60 business days to conduct screenings. Without this, LEAs would be allowed to develop their own timelines; the requirement for a specific timeline would ensure accountability for schools.</p>	
	<p>4 Adv 5 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 2 Stu (54)</p>	<p>Oppose the deletion of the 60 day timeline for screening and suggests that language be included to indicate current timelines including the provision that the screening may take place up to 60 business days prior to the start of school.</p>	
	<p>3 Adv 6 AO 2 Att 13 Cit 1 MD</p>	<p>Oppose the deletion that requires children to be referred to the special education administrator or designee no more than 5 business days after screening or re-screening if results suggest that a referral for special education and related services is indicated. The proposed language allows each LEA to designate their own timelines.</p>	

Issue	Source	Comments	VDOE Response
	25 Par 1 PT 1 SLP 2 Stu (54)		
	1 Par (1)	Suggests that Child Find services should be audited, including the personnel conducting the screenings.	
	1 Par (1)	Opposes change in the screening requirements and suggests that parents be added to child find committees.	
	1 Sped Adm (1)	Suggests a list of the screening requirements from the <i>Code of Virginia</i> and regulations – perhaps as an appendix.	
	1 AO (1)	Supports the Child Find provisions as written in Section A.	
	1 AO (1)	Supports the provision ensuring no delay in an evaluation due to early intervening services.	
<b>Child Study Teams</b> 8 VAC 20-81-50 D. (977 comments) 0	3 Adm 12 Prin 2 Sped Adm 1 Sped Tch (18)	Support the proposed removal of Child Study Committee requirements and allowing schools the flexibility of developing their own procedures.	<p>Although the Child Study Committee requirement is a longstanding Virginia-specific provision, the Board deleted the requirement for Child Study Committees to allow maximum flexibility for LEAs to develop their own procedures and timelines, including the use of research-based strategies and Response to Intervention.</p> <p>The proposed revision mandates the basic framework required for local policies and procedures to ensure children are properly screened and educational needs are identified and addressed. This basic framework includes timelines and inclusion of parents in the process. This mandated framework provides sufficient protections for children. The local policies and procedures would be subject to VDOE review through the systems of federal program monitoring, complaints, and the Annual Plan review. In response to the comments, VDOE will recommend additional provisions that expand this basic framework and clarify the school division's responsibilities in this regard.</p> <p>Local procedures would be required to address the local referral process which must include parental involvement in the process. Additionally, parents, due to the nature of the need for parent consent for an evaluation, would be a part of the process.</p>
	1 Sped Adm (1)	Supports proposed changes to the child study process because students in the child study process are not identified as students with disabilities and Child Study should be in the general education realm.	
	1 SSEAC (1)	Supports the proposal to eliminate Child Study Teams but suggests that the regulations stipulate that the LEA must establish and follow procedures developed in accordance with the regulatory language.	
	1 Adv 5 Cit 1 CSB 2 EO 15 Par (24)	Oppose the elimination of Child Study Committees.	

Issue	Source	Comments	VDOE Response
	3 Adv 5 AO 1 Att 5 Cit 9 Par 1 Stu  (24)	Oppose the proposed elimination of Child Study Teams. By leaving it up to each LEA to designate procedures to handle referrals, there will be no uniformity among LEAs.	
	1 Cit 2 Par  (3)	Oppose the elimination of Child Study Committees because they serve an important role in supporting students and determining eligibility.	
	1 Par  (1)	Opposes the elimination of the Child Study process and the requirement, instead, that children participate in RTI.	
	13 Adv 22 AO 3 Att 605 Cit 1 EO 2 Int 2 LAC 1 LEA Gen 1 MD 1 OT 170 Par 2 Psy 2 PT 3 PTA 3 SLP 3 Sped Tch 1 Sped Adm 4 Stu  (839)	Oppose elimination of Child Study Committees, thus removing such aspects as consistency in the referral process across LEAs, parental involvement, the protection of timelines and the requirement that classroom interventions not delay the evaluation.	
	8 AO 3 Att 3 Cit 2 EO 1 LAC 20- Par 1 PO 1 Sped Tch 1 Stu  (40)	Oppose the deletion of Child Study Committees since it would have a negative impact on students and not allow parents to participate in the process. Consistency among LEAs will also be lost.	

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Concerned about possible sanctions if timelines developed locally are challenged by the community and supported by the state.	
	1 Par (1)	Opposes the removal of Child Study Team requirements since that would allow LEAs an undesignated period of time before an evaluation for services is decided upon. A referral could go unheeded for conceivably an entire school year before parental consent for the evaluation is sought.	
	1 AO 7 Cit 1 MD 13 Par 1 PT (23)	Suggest that Child Study provisions be restored as well as a definition included.	
	1 Cit (1)	Opposes parents being shut out of the referral process.	
<b>Evaluation – Initial (except timeline or consent)</b>  8 VAC 20-81-60  (423 comments)	3 Adv 6 AO 3 Att 20 Cit 1 EO 1 MD 1 Psy 1 PT 1 LAC 69 Par 1 Sped Tch 2 Stu (109)	Support allowing referrals for special education evaluations to come from anyone concerned about a student’s need for special education services.	<p>Consistent with federal mandates, the proposed regulations continue to permit a referral to be made by any source. In addition, the referral may be made orally or in writing to ensure that parents have appropriate access to the referral process.</p> <p>The Child Study Committee was not included in these proposed regulations to give each LEA the flexibility to develop its own system, including Response to Intervention activities. Each LEA will be required to develop a system of referral to be included in their local procedures. VDOE will recommend additional provisions in 8 VAC 20-81-50 to expand the framework defining the LEA’s responsibilities.</p> <p>Use of the term parent throughout the proposed regulations means those individuals defined as a parent in 20-81-10.</p>
	1 AO 1 Att 1 Par (3)	Support the proposed provision which allows for referral to be made either orally or in writing. This provision helps ensure that parental referrals, which are often oral, will be addressed.	<p>The federal regulations do not mandate a timeline for when the LEA must provide parents a copy of the evaluation report(s) which is at no cost. Virginia’s special education regulations have provided that the evaluation report(s) need to be available to the parents no later than 2 business days prior to the eligibility group meeting. VDOE will recommend to the BOE additional language in 8 VAC 20-81-70 that clarifies when the LEA must provide the parents a copy of the evaluation report(s).</p>
	6 Adv 17 AO 7 Att 27 Cit 1 EO 1 LAC 2 MD	Oppose the proposal that deletes referrals from Child Study Committees and timeframes since it would have a negative impact on student and not allow parents to participate in the screening process. Consistency among LEAs will be lost. Suggest using the current language that requires a 10 day timeline for a committee to meet and make a decision along with all previous language related to the child study committee.	<p>It is appropriate for an LEA to request whatever evaluation information a parent has for the child. Whatever information a parent may have will add to an informed discussion and a meaningful decision by the committee.</p>

Issue	Source	Comments	VDOE Response
	65 Par 1 PT 2 SLP 1 Sped Tch 5 Stu (135)		Permitting an LEA and parent to agree on an extension of the 65 day timeline is in accordance with federal regulations and will prevent a committee from making a decision without needed information. This can only be done with the agreement of both parties. If a parent is concerned, he or she may refuse to agree with an extension and the LEA would be required to move forward within the required 65 day timeline.
	1 AO (1)	Suggests adding language that would require that a referral from a Child Study Committee be made within 5 business days following the determination by the committee that the child should be referred for an evaluation for special education and related services. Also suggest that the Child Study Committee report, in writing, on strategies implemented to address the child's learning, behavior, communication, or development.	VDOE does not believe further language in the regulations is necessary to clarify that additional evaluations not already completed can be provided to the student within the year.
	1 AO 2 Par (3)	Oppose the timeline being initiated by parent consent. This results in a longer timeline than in the previous regulations since it begins at a later point than the point of referral.	VDOE will recommend language to retain the current requirement that the 65-day timeline is triggered at the time the special education administrator receives the referral.
	1 AO 1 Att (2)	Suggest that language be added that would specify that parent consent be from someone who qualifies as a parent under 8 VAC 20-81-10 before proceeding with an initial evaluation when the child's parent cannot be located or if the parent's rights have been terminated in accordance with VA law.	VDOE will recommend retaining the 10 business day timeline for a team to meet to receive the referral and 3 business day timeline for the team to submit its referral to the special education administrator, placing these requirements in 8 VAC 20-81-50.
	1 AO 1 Att 1 Par (3)	Support the proposed provision which requires that a written copy of the evaluation be available to the parent no later than two business days before the meeting to determine eligibility.	
	3 Adv 11 AO 4 Att 14 Cit 1 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (80)	Oppose the proposed regulation that allows the LEA to request any evaluation information the parent may have on the child. Parents may not want to share evaluations and should be under no legal obligation to share those with the LEA.	
	3 Adv 11 AO	Oppose proposal that would allow the parent and eligibility group to extend the 65 day timeline to obtain additional data, because it unnecessarily drags out the	

Issue	Source	Comments	VDOE Response
	4 Att 15 Cit 1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 1 Sped Tch 1 SLP 3 Stu (83)	eligibility process.	
	1 AO 1 Att 1 Par (3)	Suggest that the regulations should specify that the LEA shall not conduct “the same evaluation” more than once a year. This would allow, for example, a psychological evaluation to be conducted and then a speech evaluation 6 months later. Suggest that some LEAs will not conduct any evaluation within one year if any evaluation has been conducted.	
	1 Par (1)	Opposes limiting the ability of foster parents and social workers from being allowed to refer children to child study. Since a child can be in foster care for up to 18 months, this could delay much needed services.	
<b>Timeline - Evaluation/Eligibility</b>  8 VAC 20-81-60 B. 1. g. & h.  (2216 comments)	3 Adm 1 LEA 1 LEA Gen 1 Par 1 PO 12 Prin 36 Sped Adm 2 SLP 1 SOP 3 Sped Tch 1 Sup 1 SW (63)	Support the 65 business day timeline to complete eligibility but supports the timeline being triggered by the date of parent consent.	<p>Virginia has a long-standing 65 business day timeline for which there was support from public comment during NOIRA. The Board of Education maintained the 65 business day timeline in the draft regulations for evaluations, but clarified that the 65 day timeline for an evaluation was triggered by the date of parental consent for the evaluation instead of the date the special education administrator received the referral. However, VDOE will recommend retaining the current language for when the 65-day timeline is triggered.</p> <p>VDOE does not believe it is appropriate to regulate the length of time permitted for an extension. That is a decision that should be left to the parents and the LEA based on the child’s unique needs.</p> <p>The timeline included in the federal regulations addresses only initial evaluations, not reevaluations or completing the process for eligibility determination.</p> <p>VDOE does not believe a timeline is required from the date of referral to the point of parental consent. A number of factors must be considered including the use of early intervening services, as well as the availability or willingness of the parent to sign consent.</p>
	3 Cit 1 LAC 2 LEA Adm 3 Par 22 Prin 1 PRC 15 Sped Adm 22 Sped Tch 1 SSEAC 1 Sup 1 SW	Support the current VDOE timeline of 65 business days for completion of an evaluation/ reevaluation and an eligibility determination. To change the timeline to 60 calendar days would have a significant personnel and financial impact on schools.	

Issue	Source	Comments	VDOE Response
	(72)		The commenter's suggested language related to the parent and LEA agreement to extend the evaluation timeline is included in the proposed regulations at 8 VAC 20-81-60 B.1.g.
	11 Adv 12 AO 1 Att 282 Cit 1 LEA Gen 1 MD 64 Par 1 PT 1 PTA 2 SLP 2 Stu (378)	Oppose the proposed 65 business day timeline and supports the federal guideline of 60 calendar days from date of parental consent for evaluation.	
	1 Adv 15 AO 4 Att 339 Cit 1 Con 2 EO 2 Int 1 LAC 1 MD 1 OT 134 Par 2 PO 2 PT 1 PTA 1 SLP 4 Sped Tch 4 Stu (515)	Oppose the proposed 65 day timeline and suggests the timeline for determining eligibility not exceed the federal guideline.	
	1 Par (1)	Suggests improving on federal minimum standards by requiring that the evaluation and eligibility determination process be completed within 55 business days.	
	1 Sped Tch (1)	Suggests the use of 45 calendar days to complete testing for eligibility.	
	6 AO 2 Att 11 Cit 1 EO 2 LAC 1 LEA Gen	Oppose triggering the eligibility timeline with consent rather than when the initial referral is made.	

Issue	Source	Comments	VDOE Response
	1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (58)		
	1 Att 2 LEA Gen 1 Par 2 Prin 2 Sped Adm 1 Sped Tch 1 Sup (10)	Support the timeline being triggered by receipt of parental consent.	
	1 Adv 9 AO 223 Cit 2 Int 1 MD 60 Par 1 PO 1 Prin 2 PT 1 PTA 1 SLP 1 Sped Tch 2 Stu (305)	Suggest establishing a time limit between the date of referral for evaluation to the date of parent consent to ensure the LEA does not unduly extend the timeline.	
	5 Adv 13 AO 1 Att 442 Cit 2 Int 1 MD 1 OT 113 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 2 Stu (590)	Support the extension of the evaluation/eligibility timeline with parental consent for a maximum of 10 business days.	

Issue	Source	Comments	VDOE Response
	1 Sped Adm (1)	Support allowing the 65 day timeline for evaluation and eligibility to be extended in order to obtain additional data.	
	1 Att 4 Cit 4 Par 1 Sped Tch (10)	Support the extension of the evaluation/eligibility timeline only with parental consent.	
	3 Adv 1 AO 1 Att 14 Cit 1 MD 26 Par 6 PO 1 PT 2 Stu (55)	Oppose the proposal that allows an extension of the timeline for evaluations.	
	1 Par (1)	Opposes the lack of timelines for reevaluations.	
	1 Par (1)	Opposes denying parents the right to receive timely evaluations and eligibility determinations.	
	4 Adv 1 AO 116 Cit 30 Par 1 PTA 2 SLP (154)	Support the establishment of a time limit between the date of the referral for evaluation to the date of parent consent to ensure the LEA does not unduly extend the timeline.	
	1 AO (1)	Suggest adding the federal language, "if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed." (34 CFR § 300.301(c))	
	<b>Evaluation/Reevaluation Procedures – General (except timeline, consent,</b>	3 Par (3)	

Issue	Source	Comments	VDOE Response
<p>or initial evaluation procedures)</p> <p>8 VAC 20-81-70</p> <p>(280 comments)</p>	<p>6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu</p> <p>(53)</p>	<p>Oppose deletion of language indicating that the group determines “whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals in the IEP.” Suggest that these should be considered when completing evaluations and this language is not included.</p>	<p>Although the proposed language was included (and not deleted as suggested), it is the responsibility of the IEP team, not the eligibility group, to determine services needed by a student. It is the IEP team, which includes the parent, who determines which assessments are included in a reevaluation based on their knowledge of the student’s progress.</p> <p>It is the responsibility of the IEP team to determine whether new assessments are needed for a reevaluation. For some students, especially those with more severe cognitive disabilities, parents may not wish to have their children reevaluated formally. The IEP team should have the flexibility to decide whether a reevaluation would be useful.</p> <p>The 65 day timeline may only be extended with the agreement of both the LEA and the parent. It would be inappropriate to force a meeting if both parties agree that additional information would result in a better decision for the student.</p> <p>The purpose of the evaluation process is to determine eligibility for special education and related services which includes educational needs. The proposed language, however, does include suggested language consistent with the commenters’ suggestion pertaining to students’ present level of performance and educational needs. Evaluations provide information useful in developing the Present Level of Performance for an IEP if the child is or continues to be eligible for services. Present Level of Performance, however, also includes classroom information and other observations that may not be a part of the evaluations conducted for eligibility purposes.</p> <p>VDOE agrees that it is not useful for an IEP team to meet after a reevaluation if no changes in services are suggested by any party of the eligibility process or the IEP team.</p> <p>The proposed regulations eliminated the requirement that the start of the reevaluation occur at least 65 days prior to the 3<sup>rd</sup> anniversary as it was duplicative. LEAs are still required to complete the evaluation/eligibility process within 65 business days and the process must be completed by the 3<sup>rd</sup> anniversary. The elimination of the start timeline provides more flexibility to LEAs.</p> <p>The proposed regulations outline the required personnel who must participate in the evaluation process. However, neither the federal nor the state special education regulations would preclude additional personnel from participating in the process as determined appropriate by the LEA.</p> <p>No additional clarification is necessary.</p>
	<p>3 Adv 11 AO 4 Att 14 Cit 1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu</p> <p>(82)</p>	<p>Oppose language that would allow the LEA and parent to agree not to evaluate every three years and determine that it is not needed. Suggest that triennial evaluations are necessary because they inform parents and the LEA about the functioning levels of the child.</p>	
	<p>3 Adv 3 Att 6 AO 15 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 2 SLP 1 Sped Tch 2 Stu</p> <p>(75)</p>	<p>Oppose proposal that would allow the parent and eligibility group to extend the 65 day timeline to obtain additional data.</p>	
	<p>1 Sped Tch</p>	<p>Suggests clearly specifying which disabilities require a medical diagnosis.</p>	

Issue	Source	Comments	VDOE Response
	(1)		
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 30 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (55)	Suggest that the evaluation/reevaluation process include language that requires the process to determine the child's "present level of performance and educational needs of the child" rather than the current language, "the present educational needs of the child." The present levels are important because they allow the parents and professionals to ascertain where the child is educationally functioning.	
	1 Par (1)	Opposes denying the parent input into all evaluations and assessments, including independent FBAs.	
	1 Att (1)	Opposes the proposal to make the school divisions supply copies of the evaluation reports free of charge. This requirement is not in the current regulations.	
	1 Par (1)	Suggests that students be evaluated each year to determine if goals are being met. The evaluation should consist of valid and reliable data based on IEP goals, not curriculum based assessment that may not accurately reflect a student's progress on IEP goals.	
	1 Par (1)	Recommends the resurrection of the full triennial evaluation because parents should be asked if they would like to have norm- based testing to determine if progress on IEP goals has been made.	
	1 Sped Adm (1)	Suggests the need for clarification about the restriction of evaluations to no more than once during a calendar year and the section that discusses requirements if a team determines that additional data are not needed after a review of existing data.	
	1 Par (1)	Suggests adding language that would require a comprehensive evaluation if an LEA believes that a student no longer qualifies for a related service.	
	1 Par (1)	Suggests that a provision be added to require evaluators to include recommendations of strategies, methodologies, accommodations, or other supports that would address the child's needs.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that the regulations include a provision that would require evaluation reports to include all scores for evaluations administered, including those of subtests since they are not always included and then may be lost.	
	1 Par (1)	Suggests that there is an increase in outside evaluations for eligibility which have concerns connected with them such as timelines, paperwork, transportation, use of insurance/Medicaid, etc. and that this situation need to be addressed in the regulations along with a definition for "outside evaluation."	
	1 Sped Adm (1)	Supports the elimination of the current requirement that a reevaluation be initiated 65 business days prior to the triennial date.	
	1 Par (1)	Suggests requiring triennial evaluation to be held every three years. Although these conferences can be time-consuming, they bring parents and school personnel together and greatly benefit the child. Proposed change would make it very easy to keep the status quo going to the child's detriment.	
<b>Consent -- Evaluation/Reevaluation</b>  8 VAC 20-81-60 B.2. 8 VAC 20-81-70 G. 8 VAC 20-81-170 E.1.a., E.4.a., and E.5. a. & b.  (3 comments)	1 Sped Adm (1)	Supports proposed provision allowing routine observations without parental consent. Requiring parent consent on a routine observation places undue burden on the child and school when a parent fails to give consent or does not respond to the request. The LEA, however, must provide an observation and documentation of the child's academic performance and behavior in the areas of difficulty to determine whether a child has an SLD.	<p>Consistent with federal regulations, parental consent is required for initial evaluations and for reevaluations including observations if they are a part of the evaluation. The Board of Education also proposes to maintain the Virginia-specific requirement for parental consent for initial eligibility decisions and for a change in identification.</p> <p>Classifications used in the proposed regulations are consistent with those used in federal regulations and are used to determine eligibility for special education and related services. The specific services to be provided, however, are not based on the classification but rather by individual student need as determined by the IEP team.</p>
	1 Sped Adm (1)	Supports the proposed requirement for consent for initial eligibility since parental involvement is essential.	
	1 Sped Adm (1)	Supports the continued requirement for parent consent for change in identification, but there should be less ambiguity of classifications. It may be better not to use classifications at all but just use special education with services determined by criteria, rather than eligibility determining services.	
<b>Eligibility Criteria – General</b>  8 VAC 20-81-80  (990 comments)	13 Adv 22 AO 7 Att 577 Cit 1 CSB 4 EO 2 Int 3 LAC 1 LEA 1 LEA Gen	Oppose eligibility criteria that exceed federal requirements since that would decrease the LEA's flexibility to make individual eligibility decisions and disadvantage children who may otherwise qualify for services because they don't meet all of the requirements.	<p>VDOE does not believe the suggested changes to criteria are necessary because the definitions listed in proposed VAC 20-81-10 provide sufficient guidance for eligibility determination for emotional disability, deaf/blind, and multiple disabilities. Criteria were included for other disabilities, because the definitions do not provide needed guidance for eligibility determination.</p> <p>To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included.</p>

Issue	Source	Comments	VDOE Response
	1 OT 199 Par 2 PO 3 Psy 1 PT 3 PTA 3 SLP 3 Sped Tch 5 Stu (851)		<p>Eligibility for special education requires a two-pronged identification process including determining whether a child has one of the disabilities included in IDEA and determining whether the child requires special education and related services. This has not changed from the previous regulations.</p> <p>The language that the disability must have an adverse impact on the child's educational performance is a federal requirement.</p> <p>Parents remain a part of the eligibility process. No changes were made in this regard.</p>
	4 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 27 Par 1 PO 1 PT 1 SLP 1 Stu 1 Sped Tch (50)	<p>Oppose the requirement that to be eligible, the disability must have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum. Suggest that this is criteria beyond federal law that is unconstitutional.</p>	<p>The eligibility group is in a better position of determining a need for a medical diagnosis, depending on the child's specific needs, rather than the SEA regulating the necessity of such diagnoses. This holds true also for the need to have newer psychological assessments.</p> <p>VDOE agrees with the removal of "who is trained in observations" as this language was removed from the federal regulation. VDOE will recommend this removal to the BOE.</p> <p>No additional clarification is necessary.</p>
	1 Par (1)	<p>Suggests ensuring that definitions are carefully written so that all conditions receive equal consideration and have a common understanding. For example, the definition for dyslexia is detailed as part of the definition of SLD, but other conditions are not clearly defined.</p>	
	1 AO (1)	<p>Suggests that language be included that specifies that children can be found eligible using the applicable federal definitions of disability category in conjunction with appropriate evaluations and assessments.</p>	
	1 AO 1 Att 1 Par (3)	<p>Suggests adding language that would require that the relationship of the child's behavior to the child's academic and functional performance be the standard rather than academic functioning. Suggest that the federal regulations use educational performance which is both functional and academic.</p>	
	1 LEA Gen 2 PO 13 Prin 34 Sped Adm 4 SLP 1 SOP 9 Sped Tch	<p>Support the adoption of uniform criteria for disability identification.</p>	

Issue	Source	Comments	VDOE Response
	1 SW (65)		
	1 Cit (1)	Supports adding specific criteria for multiple disabilities, emotional disturbance, and deaf/blind and that without criteria, children will not be found eligible under these categories.	
	1 Sped Adm (1)	Supports provision which allows the eligibility group during a re-evaluation to determine that the IEP team does not need to convene if there is not a change to the child's eligibility or educational needs, unless the parent requests that the IEP team meets.	
	1 Par (1)	Opposes changes that limit the involvement of parents in the eligibility process.	
	1 Par 1 Sped Tch 1 Gen Ed (3)	Suggest that the regulations need to identify which disabilities require a medical diagnosis and state that school personnel are not qualified to make a medical diagnosis.	
	2 AO 1 Cit 1 LEA Gen 1 Par 1 PO 2 Sped Tch 1 SLP (9)	Suggest including a requirement for a medical diagnosis to be determined eligible for autism, ADD/ADHD. Some LEAs require this and others do not, but LEA personnel are not qualified to make such diagnoses.	
	1 Par (1)	Suggests language that would ensure access to an interpreter for families who do not speak English and for students to be evaluated for services in the native tongue.	
	1 Par (1)	Suggests that neuro-psychological assessments be required to determine a specific disability and to help with identifying appropriate instruction and/or services.	
	1 Sped Adm (1)	Concerned about the broadening eligibility requirements particular to the identification of specific learning disability to all disability categories may lead to confusion, especially when applied to certain categories such as hearing impairment, vision impairment, and multiple disabilities.	

Issue	Source	Comments	VDOE Response
	1 LEA (1)	Opposed to language related to a member of the eligibility group who is trained in observation who performs one. Suggests the removal of the language, "who is trained in observation" just as it was removed from the proposed federal guidelines.	
<b>Eligibility -- General Procedures (except group composition)</b>  8 VAC 20-81-80 A.- I., T  (183 comments)	1 Gen ed (1)	Suggests that medical evaluations be required for autism, ADD, ADHD since school personnel are not qualified to make these diagnoses.	VDOE does not believe the suggested changes to criteria are necessary because Autism, ADD, and ADHD are identified based on observed behaviors and can be noted by trained school professionals.
	1 Sped Adm (1)	Opposes a requirement for observations for all students, particularly suspected speech language impairment or preschool DD (areas we have typically not required an observation from other than the child's teacher) - this will result in more cost and more time to complete evaluations.	The proposed provisions for observations are consistent with current federal and state requirements. Observations in classrooms are important for all eligibility determinations since it must be documented that a child requires special education in addition to having a specific disability. Observations provide the data needed to document the need for specialized instruction.
	1 PRC 1 Par (2)	Support allowing observations of children when a disability is suspected.	The proposed provision related to "performance" is consistent with federal requirements.
	1 Sped Adm (1)	Suggests clarifying the term "performance" as it pertains to documentation of determination of eligibility. Does it apply only to performance on an SOL test, overall classroom performance, etc?	RTI is an effective approach to measuring the effectiveness of targeted interventions prior to considering the possibility of a disability. If interventions are not successful, the data gathered during the RTI process provides evidence needed for eligibility determinations.
	1 Sped Adm (1)	Opposes the use of RTI for disabilities other than LD.	The proposed regulations require the LEA to provide the parent with prior notice if the LEA decides that a child is not eligible for special education and related services.
	1 Sped Adm (1)	Suggests clarifying the requirement for prior notice if a child is not eligible at initial eligibility.	The eligibility criteria proposed are generally accepted criteria and would provide consistency across Virginia.
	3 Adv 6 AO 1 Att 14 Cit 1 MD 29 Par 1 PT 1 SLP 2 Stu (58)	Oppose more stringent eligibility criteria which are highly restrictive and narrows the requirements of IDEA and the federal regulations..	Termination of eligibility is based on an evaluation process using the same criteria that was required to find a child eligible for special education and related services. This includes having a disability that creates an adverse educational impact and which requires special education and related services to address the child's needs and to ensure access to the general education curriculum.  VDOE believes that the eligibility group should decide on whether a medical diagnosis is needed as part of the evaluation process. Such decisions are based on the child's individual needs and not as a regulatory requirement for all children being evaluated.
	3 Adv 7 AO 2 Att 13 Cit	Oppose deletion of language regarding the requirement for written parental consent for any change in categorical identification.	VDOE will recommend language that retains parent consent requirements.

Issue	Source	Comments	VDOE Response
	1 MD 25 Par 1 SLP 2 Stu 1 PT (55)		<p>A school cannot change an eligibility. An eligibility group, which includes the parent, makes this decision.</p> <p>VDOE will recommend to the BOE to retain the current provision of the timeline being triggered upon the receipt of referral by the special education administrator or designee.</p> <p>VDOE will recommend to the BOE revised language to eliminate use of the phrase “for the child to have special education.”</p>
	1 Par (1)	Opposes termination of eligibility without legal or medical basis.	
	1 Par (1)	Suggests clarification is needed such as “Can the school change an eligibility?”	
	1 Par (1)	Suggests the need for clarification regarding the eligibility point of a child to transfer into Child Find from early intervention.	
	1 Gen Ed (1)	Suggests the Board reexamine eligibility criteria and identification.	
	1 Adv 1 LEA Gen (2)	Oppose delaying the trigger for the eligibility timeline until parental consent is obtained rather than starting the clock when the initial referral is made.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest that the section regarding initial eligibility be re-titled, “Children found not eligible for special education at <u>initial</u> eligibility “to add clarity that these only apply at initial eligibility.	
	1 Att (1)	Suggests the phrase, “for the child to have special education” is awkward and should read, “for the child to require special education services.”	
	1 Sped Adm 1 Par (2)	Support the adoption of criteria for disabilities.	
<b>Eligibility -- Group Composition</b>  8 VAC 20-81-80 C. 2.	1 Sped Adm (1)	Suggests clarifying required members of eligibility meetings to include only those pertinent to the evaluations and suspected disabilities. For example, the use of “and” in the list of evaluations to be conducted is confusing. Since an SLP, remedial reading teacher or school psychologist are specified, does this mean that a SLD teacher may not be used to administer diagnostic assessments?	The list of school psychologist, speech-language pathologist, or remedial reading teacher is preceded by “such as” to denote that these professionals serve as examples of someone qualified to conduct individual diagnostic examinations of children. As such, this is not meant to be an exclusive list. The provisions do not

Issue	Source	Comments	VDOE Response
(1 comment)		Suggests that costs to LEA will increase if required to have an SLP and school psychologist at every eligibility meeting.	require that an SLP or school psychologist be at every eligibility meeting, unless the professional is representing the discipline providing the assessment.
<b>Age 2 Eligibility</b>  8 VAC 20-81-10; 8 VAC 20-81-100 A. 1.  (6 comments)	2 SLP 1 Sped Adm (3)	Suggest that FAPE in Virginia should begin at age 3 as in the federal regulations. Opposed to the provision of special education services under Part B.	The <i>Code of Virginia</i> has required special education for students with disabilities from age 2 since 1972. It would require a change in the <i>Code of Virginia</i> to revise this requirement.
1 Cit (1)	Opposes Governor Kaine's program to increase preschool programs for children younger than 5. These should be family or community programs, rather than educators being surrogate parents.		
1 LEA Gen 1 Prin (2)	Support Early Intervention as the placement for 2 year olds with special needs, not public schools.		
<b>Response to Intervention</b>  8 VAC 20-81-80 J.  (94 comments)	1 Adv 1 AO 1 Cit 1 LAC 7 Par 1 SLP (12)	Suggest clarifying RTI – is it a tool for determining whether a student is SLD? If so, provide guidance regarding what tools should be used? How will response be determined? What scientifically based tools are required? Who is qualified to assess a student's response? What training is necessary for an individual to be qualified to assess a student's response to intervention?	VDOE has developed guidance and continues to provide training opportunities throughout the state on RTI. Technical assistance will continue to be available either through VDOE staff and/or through the T/TACs.  Due to the extensive technical assistance activities planned and provided, VDOE does not believe additional language is necessary for these regulations. LEAs will need the flexibility to develop local procedures and strategies for ensuring appropriate research-based strategies are implemented prior to identifying children for special education services.  In response to the comments, VDOE will recommend additional provisions under "Child Find" that expand that basic framework of the school divisions' responsibilities and the use of RTI.
1AO 1 Att 1 Par (3)	Suggests adding language, "provided that any research-based intervention or alternative research-based intervention does not delay or deny appropriate evaluations of a child suspected of having a disability." Also suggests that RTI can be misused to delay evaluations and that the VA regulations need to be clear that the use of RTI cannot "delay [an] appropriate evaluation of a child suspected of having a disability." 34 CFR 300.226(c)		
1 Par (1)	Suggests that LEAs provide links or direct information on research-based response to intervention.		
1 Par (1)	Opposes the elimination of child study committees due to the lack of clarity about RTI and special education.		
1 PO (1)	Supports the use of RTI for determining whether a child has an SLD.		
1 Cit (1)	Supports clarification regarding Response to Intervention as it relates to the determination of specific learning disabilities.		

Issue	Source	Comments	VDOE Response
	1 LEA Gen (1)	Oppose elimination of child find as the changes outlined are very vague and do not include some very important parameters such as who will be responsible for the implementation of interventions and what constitutes an intervention. How will it be ensured that interventions are research-based and target the specific learning need of the child? How does the process work? At what point are special education services warranted?	
	3 Adv 5 AO 3 Att 9 Cit 1 EO 1 LAC 1 MD 46 Par 1 Psy 1 PT 2 Stu 1 Sped Tch (74)	Support strengthening the language regarding RTI. The proposed regulations only state that RTI cannot "needlessly delay" evaluations, but the federal requirements are stronger.	
<b>Consent -- Partial or complete Termination of Services</b>  8 VAC 20-81-90 B. 3. 8 VAC 20-81-170 E.2.f.  (1440 comments)	3 Adm 2 Att 4 Cit 2 Gen ed 10 LEA Gen 1 OT 3 Par 1 PO 25 Prin 10 SLP 1 SOP 60 SpedAdm 27 Sped Tch 2 Sup (151)	Support the proposed removal of parental consent requirement for full or partial termination of services. Rationales: <ul style="list-style-type: none"> <li>• Cannot support the use of resources and instructional time for students who have demonstrated their ability, through reevaluation, to access the general curriculum to meet state standards, and therefore, are not eligible for special education and related services;</li> <li>• To maintain termination causes significant personnel and financial impact on schools; and</li> <li>• LEAs should not be required to provide costly special education and related services to students who do not meet eligibility criteria, yet whose parents refuse to consent to termination.</li> </ul>	In its proposed regulations, the Board of Education proposed to continue to include most Virginia-specific consent requirements, but proposed the elimination of the consent requirement for partial or complete termination of services: <ul style="list-style-type: none"> <li>• to ensure that special education and/or related services and the associated rights are provided to only those students whose evaluation data and progress reports continue to indicate eligibility, and</li> <li>• to ensure that IDEA funding is used appropriately to provide services to only those students who are determined eligible for special education and related services in accordance with IDEA.</li> </ul> LEAs submitted examples in which staff are assigned to students who are no longer eligible, but whose parents will not sign consent for removal from special education.
	20 Adv 32 AO 7 Att 4 Brd 684 Cit 1 CSB 7 EO 2 Gen ed	Oppose the proposed elimination of parental consent for full or partial termination of services.	In response to the comments, however, VDOE will recommend that the BOE retain the current parent consent requirement.

Issue	Source	Comments	VDOE Response
	1 Guid 2 Int 3 ITC 4 LAC 4 LEA Gen 3 MD 1 OT 418 Par 4 PO 2 PRC 1 Prin 1 Priv 1 Psy 3 PT 4 PTA 4 SLP 2 Sped Adm 13 Sped Tch 1 SSEAC 7 Stu 1 SW 1 Voc (1238)		
	1 Att 9 Cit 1 EO 1 LAC 1 MD 3 Par 24 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (45)	Oppose deletion of language indicating a requirement for parental consent for any determination that a child is no longer eligible for special education services.	
	1 Par (1)	Suggests that VDOE and LEAs should initiate due process if they feel that services must be terminated against the parents' will. The decision can then be made through an impartial and objective hearing process.	
	1 Att (1)	Supports the parent's opportunity to "veto" the IEP.	
	1 Sped Adm (1)	Unsure of proposed regulations that would eliminate parent consent for full or partial termination of services. Current regulations requiring parental consent puts all control for termination in the hands of one or two people and this can lead to a	

Issue	Source	Comments	VDOE Response
		complete disregard of committee deliberations. However, parents have the primary responsibility for the overall education of their children and if there is disagreement about the termination of services, the pattern of success in the classroom over the preceding 2-3 years should be the determining factor.	
	1 Par (1)	Suggests that current language is confusing which indicates that parental consent is not required while the LEA must comply with the prior written notice requirements. Recommends elaborating on due process if this is the case.	
	1 Par (1)	Clarify whether or not IEP goals may be terminated without parental consent.	
	1 Psy (1)	Suggests that if the IEP team reaches consensus, special education and related services may be terminated without consent. However, parents who are not in agreement should have the option to file an appeal within 30 days of the decision. During the appeal, the current IEP would remain in effect. Notice requirements would attach.	
<b>Termination of Services (other than consent)</b> 8 VAC 20-81-90 A. - C. (59 comments)	1 Par (1)	Recommends adding language that would require the IEP team to determine when a child is no longer a child with a disability who needs special education and related services, would allow a related service to be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services, would require the IEP team to include local educational agency personnel representing the specific related services discipline being terminated, and would require the local educational agency to comply with prior written notice requirements when services are terminated.	The VDOE recognizes the need to ensure clarity in these provisions. Therefore, it will recommend modifications to the language.  The suggested language was included in the draft regulations.
	3 Adv 6 AO 2 ATT 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding federal language to include, "A public agency must provide a child whose eligibility terminates because of graduation from secondary school with a regular diploma or exceeding the age of eligibility for FAPE, with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals."	
	1 Att (1)	Suggests clarifying the language "shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility...."	
	1 AO 1 Att 1 Par	Recommend adding language "or before completely terminating a child's related or supplementary services" to ensure that appropriate data is used before terminating special education as well as additional support services.	

Issue	Source	Comments	VDOE Response
	(3)		
<b>FAPE – General</b> 8 VAC 20-81-100 A. 2., B. - D., K., M  (139 comments)	1 Gen Ed (1)	Suggests that requirements for transitions from level to level, in addition to transition to postsecondary settings, be included in the regulations. This would include transition from elementary to middle school and middle to high school.	VDOE believes the IEP process is designed to address adequately the transition needs from elementary to middle and middle to high school without imposing additional regulatory requirements.
	1 Sped Tch (1)	Suggests that students with disabilities should not be urged to opt for a regular diploma when their reading levels are well below their grade level. Suggests that students with disabilities are marketable with a modified standard diploma.	IDEA & NCLB measure school performance partly by the percentage of students graduating with a standard or advanced studies diploma. IEP teams, however, determine the diploma to be targeted for individual students.
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Oppose deletion of language pertaining to a full educational opportunity goal. This requires LEAs to remain engaged, responsible and accountable for setting goals that demonstrate their partnership with students and parents for providing full educational opportunities for students with disabilities.	VDOE believes that the proposed regulations in their entirety are consistent with, or exceed the requirements of IDEA and the federal implementing regulations.  The provision for children with disabilities, regardless of citizenship or immigrations status, being provided FAPE is ensured in 8 VAC 20-81-30 B.10 consistent with OSEP guidance and case law.  VDOE is ultimately responsible for FAPE for all children with disabilities in accordance with the federal and state requirements. Through monitoring and technical assistance activities, VDOE works with all LEAs to ensure compliance with the regulations.
	3 Adv 6 AO 2 Att 11 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (51)	Oppose the language, “who meet the age of eligibility requirements in 8 VAC 20-81-10” since this is intended to prevent students over the age of five in the DD category from receiving services.	VDOE has held that the length of the school day for preschoolers is determined by the IEP team. VDOE agrees with the commenter and will recommend added language to the BOE to clarify this requirement.
	1 Par (1)	Questions how VDOE will ensure FAPE if the proposed regulations pass, especially if the school has its own agenda.	
	1 Att (1)	Seeks clarification regarding the requirement for non-citizens of the US to be evaluated and receive FAPE.	
	1 Par (1)	Suggests that an appropriate education can only be determined with the parents and teachers working together.	

Issue	Source	Comments	VDOE Response
	1 Att (1)	Clarify what is meant by “separate facility.” Does this mean separate public and private schools?	
	1 Par (1)	Suggests that a provision be added to specify that the need for transportation not be used to arbitrarily shorten the length of the school day.	
	1 Cit (1)	Suggests that schools should be required to start classes for students with disabilities at the same time as other students. Starting later has cost children as much as 5 hours per week of instructional time.	
	1 Par (1)	Concerned that the proposed regulations do not provide the same level of requirements as the federal special education regulations.	
	1 Sped Adm (1)	Suggests that a provision be included to require a schedule for students in the early childhood program that is comparable in length to school age children.	
<b>Transportation (other than private school)</b> 8 VAC 20-81-100 G.3. (3 comments)	1 AO 1 Att 1 Par (3)	Support G.3. as written requiring transportation to and from an education program comparable in length to the commute provided to children without disabilities unless the child’s IEP determines that a longer or shorter commute is necessary to ensure that the child receives FAPE.	This provision is consistent with federal requirements.
<b>Timeline – IEP Development</b> 8 VAC 20-81-110 B.2.b. & c. (234 comments)	1 Sup (1)	Opposes the change from “as soon as possible” to “within 30 days of parental consent” for IEP implementation because IEP teams need to have the authority to decide.	The proposed regulations require that an LEA implement the services on an IEP as soon as possible or within 30 days unless they provide in writing a reason for not providing them. In the past, the regulations required only as soon as possible. The standard of 30 days is a reasonable timeline and is stricter than current provisions. Including this language clarifies the expectation. However, VDOE will recommend that the BOE delete this proposed change.  The expectation is that the parent receive a copy of the IEP at the meeting or as soon as possible thereafter. VDOE will recommend modifying the provision to say that the LEA is to provide the parent with a copy of the IEP at the meeting or within a reasonable time after the meeting, not to exceed 10 days.
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 33 Par 1 PO 1 PT 1 SLP 1 Sped Adm 1 Sped Tch 1 Stu (59)	Oppose proposed provision that allows LEAs to take up to 30 calendar days to implement an IEP and suggests using current language that requires the LEA to implement an IEP as soon as possible following the IEP meeting.	

Issue	Source	Comments	VDOE Response
	4 Adv 6 AO 2 Att 13 Cit 1 EO 1 MD 50 Par 1 PT 1 SLP 3 Stu (82)	Oppose lengthening the time, without parental consent, that a school has to postpone addressing a child's specific accommodations.	
	1 Par (1)	Opposes changes to the timeline for IEP implementation from "days" to "business days" and only counting once parental consent is obtained, thus delaying services to students.	
	11 AO 4 Adv 3 Att 14 Cit 1 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Adm 1 Sped Tch 2 Stu (81)	Oppose the proposed provision that allows 10 calendar days from the date of the IEP meeting to provide a copy of the IEP to the parent. A parent must see the IEP to provide informed consent and this should be provided immediately at the end of the meeting or no more than 2 days after the meeting.	
	1 Sped Adm (1)	Opposes the proposed provision that requires that a copy of the IEP be given to parents no later than 10 calendar days from the date of the IEP meeting.	
	1 Cit (1)	Supports the proposed change that provides a timeline of when to provide a copy of the IEP to the parent, but requests the timeframe be reduced to 5 business days.	
	2 Par (2)	Suggest changing the implementation timeline to "not to exceed 10 days" rather than 30 – unless the LEA documents reasons for the delay.	
	1 Cit (1)	Opposes the proposed timeline for IEP implementation and suggests it be revised to require IEPs to be implemented within 10 calendar days of consent and that	

Issue	Source	Comments	VDOE Response
		makeup services be provided for delays beyond 10 calendar days.	
	1 LEA 3 Sped Adm (4)	Support the provision that does not require an IEP to be developed within 30 days of an eligibility at which services are continued rather than initiated and when there is no need for a change to the IEP as this would eliminate wasted time, effort, and paper.	
	1 AO (1)	Supports the requirement that an IEP be developed within 30 calendar days of eligibility.	
<b>IEP -- Accountability for achieving IEP goals</b>  8 VAC 20-81-110 B.7.  (714 comments)	9 Adv 16 AO 5 Att 416 Cit 1 EO 1 Indiv 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 147 Par 1 Psy 1 PT 2 PTA 1 SLP 2 Sped Tch 6 Stu  (614)	Oppose the proposed provision that does not hold LEAs accountable for projected growth in the IEP. Suggest that the regulations require LEAs to be accountable for students making progress on IEP goals and if a child repeatedly fails to meet IEP goals or benchmarks.	In the discussion section of the federal regulations, USDOE noted in a response to a similar comment that “accountability for a child achieving his or her goals (is) unnecessary because other Federal laws, such as title I of the ESEA, already provide sufficient motivation for agency effort to assist children with disabilities in making academic progress.” VDOE concurs with this position. However, VDOE will recommend to delete this provision and address the issue through technical assistance to school administrators and consumers as the issue arises.
	1 Adv 6 AO 1 Att 8 Cit 1 EO 1 LAC 1 MD 24 Par 1 PO 1 PT 1 SLP  (46)	Oppose deletion of language that requires an LEA to make a good faith effort to assist the child to achieve goals, including benchmarks or objectives, listed in the IEP.	
	3 Adv 6 AO 2 Att	Suggest that parents be required to receive a draft copy of the proposed IEP document at an IEP meeting when all LEA personnel have a copy.	

Issue	Source	Comments	VDOE Response
	13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)		
<b>IEP – Team Composition (except excusal of members)</b>  8 VAC 20-81-110 C.  (112 comments)	1 Sped Adm (1)	Supports the proposed regulation that the LEA determines who fills the role of LEA IEP team members.	<p>The proposed provisions regarding the LEA’s authority to determine who fills the roles of LEA IEP team members is consistent with USDOE guidance. VDOE has not removed parents from the IEP team composition.</p> <p>The phrase “at parent’s request” is consistent with the federal requirement.</p> <p>VDOE will retain “whenever is appropriate” which was included in the proposed regulations.</p>
3 Adv 6 AO 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu 2 Att (54)	Oppose proposed provision that allows the LEA to decide which school personnel will participate in the meeting. Suggest that federal guidance only applies to personnel filling the roles, not identifying the roles needed at the meeting. Suggest that this would limit what the parents may discuss by limiting or preventing related services personnel from attending the meeting.		
2 Par (2)	Oppose removal of parents from the IEP team composition.		
1 Par (1)	Opposes the use of “at the parent’s request” to determine when an LEA invites the Part C service coordinator or other representative of the Part C system. Suggests that the LEA “must” invite whenever a child is transitioning from Part C to Part B.		
1 Par (1)	Suggests including language indicating that there are no restrictions on the individuals/friends that a parent would like to come to an IEP meeting.		
3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Supports proposed change from “if” to “whenever is appropriate” for child participation in the IEP meeting. This provides more impetus to include the student.		
<b>IEP – Excusal of Team Members</b>	6 AO 3 Adv	Oppose the proposed language used to describe the excused members requirements for submission of information and suggest replacing it at 20-81-110	The proposed provisions are consistent with the federal regulations.

Issue	Source	Comments	VDOE Response
8 VAC 20-81-110 D.  (53 comments)	2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	D.2.b. with the following: "the excused member submits in writing to all IEP team members sufficient information to aid in the development of the IEP prior to the day of the meeting. The information shall be forwarded to the parent(s) at the same time as the other IEP team members." By providing this at the same time to parents will facilitate parent/team participation and by having it in advance, they can adequately consider it and possibly ask questions from the excused member in advance of the meeting.	
<b>IEP – Parent Participation in Meeting (except recording of meetings) – includes notice of meetings</b>  8 VAC 20-81-110 D. – E.  (51 comments)	1 Par  (1)	Supports parents as a member of the IEP team – better to work with parents than make an enemy.	The proposed provisions are consistent with the federal regulations and require that parents are invited to participate in IEP meetings with certain rights associated with participation including the right to bring someone to the meeting who meets the regulatory requirements.
	4 Adv 1 AO 1 Brd 3 Cit 1 EO 31 Par 1 Prin 1 Psy 1 Sped Tch 1 Stu  (45)	Oppose proposed changes that would limit or decrease parent participation in the IEP process.	
	1 Con 1 Par  (2)	Oppose the proposed change indicating that the IEP meeting notice "may" be in writing rather than "should" be in writing. However, suggest a change requiring that the IEP meeting notice "must" be in writing.	
	3 Par  (3)	Suggest that the IEP process does not permit parents to have access to school district information on such issues of testing results, instructional methodologies, and coordination of services or preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal and that eventually become part of a due process. Not only does the school have superior information and expertise, but their representatives dominate the IEP team. Parents are decisively outnumbered by their school counterparts. School systems maintain exclusive control of IEP documents during their development.	
<b>IEP – Recording of Meetings – video or audio</b>  8 VAC 20-81-110 E.6.  (111 comments)	1 AO 1 Att 2 Par  (4)	Oppose limiting audio or video recording at eligibility, IEP, and MDR meetings. Support allowing recording of these meetings.	VDOE's proposed revision is the same as the current provision that permits audio recording at IEP meetings. Video recording is in accordance with the LEA's policy. According to current regulations of the proposed revisions, the use of audio recording applies to IEP meetings where the IEP is being developed, reviewed or revised. The US DOE has also spoken of audio recordings in this same context. Local policies have determined the use of audio recording for other types of IEP team meetings, such as eligibility or MDR. However, VDOE agrees with the
	6 AO 3 Adv 1 Att 14 Cit	Oppose the limitation of recording to only IEP meetings and suggests that eligibility meetings be added to this provision. Eligibility meetings have a significant impact on a child's future and provision of FAPE. It is imperative that parents be allowed to record in order to review the specific details of the	

Issue	Source	Comments	VDOE Response
	1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	meetings. This meeting can be overwhelming and unfamiliar information and terminology is likely to be used. Recording eligibility meetings will help reduce the confusion.	comments that its use should be expanded to include eligibility and MDR. Accordingly, VDOE will recommend the expanded language to the BOE. Additionally, VDOE will recommend to move the provision for audio taping to 8 VAC 20-81-170, Procedural Safeguards, since the use of audio taping will extend beyond IEP meetings.
	3 Adv 7 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 2 Stu (53)	Supports the proposed provisions that specify the use of policies that regulate recording meetings. This will facilitate consistent or uniform application of parent rights and provides a clear understanding of what those rights are.	
	1 Att (1)	Suggests changing “for the purposes of developing, reviewing, revising the child’s IEP” to read “other than IEP meeting”. As stated, it appears inconsistent with item (b)(1) and suggests that a staff planning meeting to draft an IEP could be recorded. I know this result was not intended.	
<b>IEP – Development, Review, and Revision</b>  8 VAC 20-81-110 F.  (171 comments)	1 Par (1)	Opposes changes to IEP guidelines.	The proposed provisions are consistent with the federal regulations.
	1 Cit (1)	Opposes the elimination of summer school for students with disabilities.	Summer school has always been an LEA initiative under the general education curriculum. It is separate and distinct from ESY services.
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 SLP 1 PT 1 Sped Tch 1 Stu (53)	Oppose the proposed language that states that an IEP is not required to include additional information not explicitly required by the proposed regulations, because IEPs are individual and may require additional information for some children.	The proposed language regarding an IEP, not including additional information, is a federal requirement.  It is inappropriate for VDOE to recommend regulating methodologies, such as <b>LOVASS</b> or <b>ABA</b> .
	3 Adv 6 AO 2 Att 12 Cit 1 MD 23 Par	Suggest amending language related to IEP content to say, “nothing in this section shall be construed to prohibit” (rather than “require”). If additional information in the IEP helps make the IEP easier to follow, that would help ensure FAPE for the child. That information should not be prohibited from being included.	

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 2 Stu (51)		
	1 Stu (1)	Suggests that the requirement for an IEP not be removed.	
	2 AO 1 LEA Gen 1 Par 1 PO 1 SLP 2 Sped Tch (8)	Suggests that all members of the IEP team be informed prior to any changes to the child's IEP.	
	1 Par (1)	Suggests the need for expanded professional services and additional aids for students with hearing impairments.	
	1 Cit (1)	Suggests that all schools should be required to implement Lovaas or ABA.	
	1 Par (1)	Suggests including language that distinguishes between when speech/language services are specially designed instruction because a child has a speech/language impairment, and when speech/language services are a related service.	
	1 Par (1)	Supports including language indicating that the parent and/or child have the right to select a mode of communication for the child, and not the LEA (i.e., ASL v. ESL).	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu (52)	Support the proposed deletion of "if appropriate" at 20-81-11- F.2.a. in addressing the need to consider the use of positive behavior intervention, strategies, and supports when behavior impedes the child's learning or the learning of others. This should be standard practice.	
<b>IEP -- Content (General)</b> 8 VAC 20-81-110 G.	1 Sped Adm (1)	Supports the creation of regulations and IEP forms that promote collaboration between the LEA and families. There are parents willing to take on aspects of their child's education that deal with life skills, however, these items are not noted in the IEP for fear of LEAs being held responsible.	Only those IEP requirements included in the federal regulations or the <i>Code of Virginia</i> are included in the proposed regulations. These regulations do not prohibit the use of procedures developed locally to enhance the collaboration that is intended

Issue	Source	Comments	VDOE Response
(658 comments)	2 Sped Adm 1 Sped Tch (3)	Support distinguishing between placement and location; the IEP team determines placement (i.e., the provision of special education and related services on the continuum of services) whereas the local education agency determines the specific place/site/location for the delivery of these services.	to be used in the special education process. Decisions regarding services included in an IEP are made by the IEP team. Once developed, the LEA must implement the IEP as written after receiving parent consent.
	1 Par (1)	Suggests that clarification is needed related to the indication that an amended IEP is not a substitute for an annual IEP.	The proposed regulations provide additional clarification regarding placement and location, complying with all federal mandates.
	1 Brd 14 Par 1 Indiv 1 PTA 2 Stu (19)	Oppose elimination of parental participation in the IEP process to ensure equitable involvement.	An amended IEP does not substitute for a full revision. This would not substitute for an annual review and revision which would review and revise each section of the IEP, thus resulting in a new document. VDOE does not believe it is necessary to further clarify this in the regulations.
	5 Adv 14 AO 3 Att 1 Brd 301 Cit 3 EO 2 Int 1 MD 1 OT 145 Par 1 PO 2 PT 2 PTA 1 SLP 2 Sped Tch 6 Stu (490)	Oppose the proposed provision that allows an LEA to refuse a parent's request for an IEP meeting if they consider such a request unreasonable.	Parental participation was not decreased in the proposed regulations.  Based on guidance from USDOE, it has been the position of VDOE that an LEA can deny a parent's request for an IEP meeting if the LEA considers it unreasonable. It was included in these proposed regulations to clarify this position for all parties. However, VDOE will remove the provision in this revised draft and provide school administrators and consumers the necessary information when it arises.
	3 Adv 10 AO 3 Att 16 Cit 1 EO 1 LAC 1 MD 44 Par 1 PO 1 PT 1 SLP 1 Sped Tch	Oppose the provision that allows an LEA to provide a copy of an amended IEP to the parent only on request. Suggest that the LEA be required to provide the parent with a copy automatically to ensure complete understanding on the part of the parent regarding what was decided and agreed upon at the meeting.	It is consistent with federal regulations that an LEA would need to provide a copy of an IEP with amendments only when a parent requests it. There are times when minimal changes are made and a complete copy of the IEP is not necessary unless a parent wants the copy. A requirement to provide a copy at all times increases unnecessarily the time and resources necessary to copy.  The proposed regulations require that an LEA implement the services on an IEP as soon as possible or within 30 days unless they provide in writing a reason for not providing them. In the past, the regulations required only as soon as possible. The standard of 30 days is a reasonable timeline and is stricter than current provisions. Including this language clarifies the expectation. However, VDOE will recommend to the BOE to retain the current language.  Parental rights have not been removed except in the case of termination of services in which a parent's consent is not required if the data do not support continued eligibility. In this situation, if a child's services are terminated without parental consent, the right to an independent educational evaluation, mediation, or due process continues to be provided to parents. However, VDOE will recommend to the BOE to retain the current parent consent provision.

Issue	Source	Comments	VDOE Response
	3 Stu (86)		The need to provide therapy for missed sessions is the result of long-standing guidance from USDOE. Sessions are not required for make up only in those cases during which the child is absent from school. Another school-wide activity is insufficient cause for not providing the therapy on the IEP.
	1 Par (1)	Suggests clarifying that IEPs must be in effect at the beginning of the school year – not just “in process.”	
	1 Par (1)	Suggests clarifying that instruction in a self-contained class should not affect diploma options if the student can pass the required test with the same modifications provided in the general education class.	VDOE provided guidance to school divisions in June 2008 regarding service dogs in Virginia’s public schools, in compliance with the 2008 changes to the Code of Virginia in this regard. VDOE does not believe that additional regulations to these proposed special education provisions are necessary.
	1 Par (1)	Suggests that the IEP delineate the methodologies to be used to achieve the IEP goals and specify the amount of time that is allotted for each IEP goal addressed.	
	1 Par (1)	Suggests language be included in the proposed regulations regarding service animals because recent VA law has clarified the right of disabled persons to use service animals in school. Suggests that if it is not a policy in the regulations, then IEP teams may be misinformed regarding the right of a disabled student to use a service dog.	
	1 Par (1)	Suggests that assessment subtest scores need to be included in the IEP, particularly in the areas of reading, writing, and math as well as IQ subtests. It is imperative to know if a child has a difficulty comprehending what they read because they cannot decode the words or there are other problems involved.	The phrase “based on peer” reviewed...” was inadvertently omitted from the proposed regulation. VDOE will recommend that the phrase be inserted.
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest that the provision, G.4., regarding the statement of services to be included in the IEP include the following federal language, “based on peer-reviewed research to the extent practicable.” This is intended to provide guidance on best practice and the child’s education will be improved by using methods tested and proven to work. The federal requirement comes from 300.320(a)(4).	
<b>IEP Content – Present Level of Performance</b>  8 VAC 20-81-110 G.1.  (57 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 1 PT 24 Par 1 SLP 2 Stu (53)	Suggest using the term “shall” rather than “should” in describing what will be included in the present level of performance.	The requirements for the present level of performance are based on the federal regulations. The term, “shall,” is used in the proposed regulations to describe what must be included in the present level of performance.  The present level of performance provides the data-driven foundation on which the rest of the IEP is based. The proposed regulations require that the present level of performance relate to other components of the IEP.

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests the use of data-driven IEPs as the implementation of the plan is closely monitored and changes can be made based on the data, which is where the most success is seen.	
	1 AO 1 Att 1 Par (3)	Suggest that it be required for the present levels of performance directly related to other components of the IEP.	
<b>IEP Content - Short-Term Objectives</b>  8 VAC 20-81-110 G. 3.  (1080 comments)	7 Adv 17 AO 6 Att 1 Brd 187 Cit 1 CSB 1 EO 1 ITC 1 LAC 1 MD 33 Par 1 PO 1 Psy 1 PT 1 Sped Adm 3 Stu (263)	Oppose proposed elimination of short-term objectives for non-VAAP students. Support the requirement for short-term objectives and benchmarks for all students.	<p>The inclusion of short term objectives for all students is not necessary and as Congress identified, would impose unwarranted paperwork and burdens on LEAs. With local accountability for students with disabilities to participate in the general education curriculum and perform successfully on standardized tests alongside peers without disabilities, the Board proposed retaining short term objectives for only those students participating in an alternate assessment. However, language is included to provide IEP teams with the flexibility to include short term objectives, if necessary for FAPE.</p> <p>Also, as participants on the IEP team, parents have the right to request consideration of the inclusion of short-term objectives into their child's IEP. A refusal would require prior written notice from the school division, which would include a justification for refusal.</p>
	10 Adv 12 AO 1 Att 573 Cit 2 Int 1 LAC 1 LEA Gen 1 MD 126 Par 1 PO 2 PT 3 PTA 3 SLP 2 Sped Tch 1 SSEAC 2 Stu (741)	Suggest clarifying that IEP teams must consider including short-term objectives for all students. Unless consideration is included on the IEP meeting agency checklist, these tools will go unused.	

Issue	Source	Comments	VDOE Response
	3 LEA Gen 1 PO 12 Prin 1 SLP 36 Sped Adm 20 Sped Tch 1 SSEAC 1 SW (75)	Support elimination of short-term objectives/ benchmarks, consistent with IDEA 2004, to be required only for students eligible for the alternate assessment.	
	1 Sped Adm (1)	Supports the proposed elimination of required short-term objectives as indicated in the draft regulations, but also agrees that LEAs should be allowed to have the right to choose. They may be needed for speech, OT, HI, VI, and PT.	
<b>IEP - Progress Reports</b>  8 VAC 20-81-110 G. 8.  (1054 comments)	18 Adv 24 AO 6 Att 2 Brd 587 Cit 1 CSB 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 221 Par 1 PO 1 Psy 5 PT 1 PTA 3 SLP 2 Sped Adm 2 Sped Tch 10 Stu (890)	Oppose proposed elimination of requirement to require progress reports at least as often for students with disabilities as for students without disabilities. Support requiring IEP progress reports at the same intervals as nondisabled peers.	The proposed provisions are consistent with federal regulations requiring that each student's IEP include a description of how a child's progress toward meeting annual goals will be measured and when periodic progress reports will be provided. This reporting may be more frequently, less frequently, or with the same frequency as students without disabilities and is based on the unique needs of each student, and determined by the IEP. However, VDOE will recommend to the BOE to retain the current language in order to clarify that IEP progress reports be provided at the same intervals as provided to non-disabled peers.
	1 Adv 5 AO 1 Brd 5 Cit 1 LAC 3 LEA Gen 76 Par 3 PO 12 Prin 1 SLP 30 Sped Adm 22 Sped Tch 2 Stu	Support the proposed regulation regarding the provision of progress reports to parents.	

Issue	Source	Comments	VDOE Response
	1 SW (163)		
	1 Cit (1)	Opposes the proposed elimination of the phrase, “the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year” because removing this may cause a teacher to feel less pressure for a child to master his/her IEP goals.	
<b>IEP Content – Secondary Transition (except transition age)</b>  8 VAC 20-81-110 G. 10 & H.  (270 comments)	6 Adv 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu  (54)	Oppose the proposed deletion of language that indicates that the IEP “shall include related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, the acquisition of daily living skills and functional vocational evaluation.”	<p>The proposed provisions are consistent with federal regulations and VDOE believes that it is inappropriate to regulate such specificity for programs of student to include transitional programs on college campuses. This is one option for an IEP team to consider depending on the student’s educational needs and secondary transition goals.</p> <p>VDOE agrees that the content of the IEP include a provision regarding the parent and student having been informed regarding the transfer of rights to the student. Additionally, 8 VAC 20-81-180 includes a provision for both parent and student being notified of this right.</p> <p>VDOE does not believe that the SEA should regulate which school personnel are responsible for ensuring that transition services are provided as a coordinated set of activities. The LEA is responsible for assigning its own personnel for this task.</p> <p>VDOE does not believe that it should regulate who in the LEA will be responsible for inviting representatives from other agencies to the IEP team. While VDOE holds the LEA responsible for ensuring that the representatives(s) from other agencies are invited to the IEP team meeting, the LEA is responsible for assigning its own personnel for this task.</p> <p>The USDOE is clear that school divisions are not required to conduct evaluations for children to meet the entrance or eligibility requirements in postsecondary settings; however, rather than regulations this item, VDOE will include it in the training of consumers and address the issue as it arises.</p> <p>VDOE does not consider it feasible or within its authority to take the lead in coordinating postgraduate programs between LEAs and college for students who can earn a modified IEP diploma.</p>
	3 Adv 6 AO 1 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (52)	Suggest adding language describing programs of study outside the regular secondary curriculum to include transitional programs on a college campus, if the student’s IEP team includes such services on the IEP (from the IDEA regulations preamble).	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Suggest adding a requirement that the parents be involved in the notification process regarding age of majority to say, “. . . shall include a statement that the student and parent(s) have been informed of the rights . . .” The proposed regulations only currently include the student, but the parents may have the need to gather documentation to show that they need to continue to make educational decisions.	

Issue	Source	Comments	VDOE Response
	2 SW (2)	Suggest clarifying which school personnel will be responsible for ensuring that transition services are provided as a “coordinated set of activities.”	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 1 PT 2 Stu (53)	Support the proposed provisions regarding transition in the IEP regarding participants, additional notice requirements, and secondary transition services. These changes facilitate smoother and more effective secondary transition efforts.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 SLP 2 Stu (53)	Suggest indicating in the regulations who will be responsible for inviting representatives from other agencies to the IEP meeting. Suggested language is, “identify any other agency whom the local educational agency will invite to send a representative, and identify any other agency whom the parent(s) will invite to send a representative.” This would avoid confusion regarding who will take the responsibility for inviting representatives and better ensure parent participation.	
	1 Sped Tch (1)	Suggests that VDOE take the lead in coordinating postgraduate programs between LEAs and community colleges for students who can earn a modified IEP diploma.	
	2 Sped Adm (2)	Support the provision that a school is not required to conduct evaluations for children to meet the entrance or eligibility requirements of a vocational rehabilitation program, college, or other postsecondary setting.	
<b>Transition Age</b> 8 VAC 20-81-110 G. 10 (1111 comments)	3 Adm 3 LEA Gen 1 PO 1 PRC 24 Prin 1 SLP 37 Sped Adm 22 Sped Tch 1 Sup 1 SW (94)	Oppose required transition at age 14 - Keep transition requirement at 16 years.	Despite the desire to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education maintained the requirement to begin transition services at age 14 based on: <ul style="list-style-type: none"> <li>public comment during NOIRA from both parents and school personnel indicating the need to begin transition planning prior to the start of high school, and</li> <li>the need to ensure that students with disabilities have the opportunity to meet certain transition expectations prior to exiting public education.</li> </ul> VDOE, however, recognizes the benefit of differentiating these regulatory requirements applicable when the student is age 14 versus those when the student is age 16, and will recommend
	12 Adv	Support the requirement that transition be addressed in IEPs beginning at age	

Issue	Source	Comments	VDOE Response
	20 AO 4 Att 631 Cit 1 EO 1 IHE 3 Int 2 LAC 2 LEA Gen 1 MD 1 OT 216 Par 2 PO 1 Psy 2 PT 2 PTA 3 SLP 1 SOP 6 Sped Adm 10 Sped Tch 5 Stu 6 TTAC 3 Voc (935)	14.	this change to the BOE.  Other transitions are not addressed in the federal regulations and it would not be appropriate to regulate the way that localities transition students from preschool to kindergarten programs or from elementary to middle schools, as examples. The IEP team may, however, address specific needs relative to these transitions.
	3 LEA Gen 1 PO 12 Prin 1 SLP 38 Sped Adm 13 Sped Tch 1 SW (69)	Suggest grade level alignment for transition services, convening no later than the completion of the 8 <sup>th</sup> grade to coordinate with the Modified Standard Diploma regulations.	
	1 SSEAC (1)	Suggests using standard in current regulations which requires a two-tiered system that begins at age 14.	
	1 Sped Adm (1)	Supports the beginning of transition planning including student involvement, assessments, information gathering at age 14 but feel that applying all of the age 16 requirements to 14-15 year old students goes beyond the intent of the federal law. If the 14-15 year group remains then the requirements should stay with the current regulations (course of study, etc.).	
	2 AO 1 LEA Gen 1 Par 1 PO	Suggest including transition requirements for all transitions including infant and toddler to preschool transition, preschool to elementary, elementary to middle, middle to high, to ensure success at the critical transition milestones.	

Issue	Source	Comments	VDOE Response
	1 SLP 3 Sped Tch (9)		
	1 Cit (1)	Suggests that transition begin before age 14; suggests age 11.	
	1 Sup (1)	Opposes the requirement that transition be addressed in IEPs beginning at age 14. Students with mild disabilities are often planning for post-secondary activities anyway and the additional paperwork is often meaningless. LEAs should have the option to delay transition planning until age 16.	
<b>Transfer Students</b> 8 VAC 20-81-120 (100 comments)	1 Sped Adm (1)	Supports removal of Virginia specific requirements for transfer students.	<p>The proposed provisions are consistent with federal regulations and provide for the continued provision of FAPE. The provision of services comparable ensures that the student is provided with appropriate services during the time between the transfer and the development of an IEP. This gives the LEA time to gather information, including evaluations if determined necessary, before developing an IEP. The parent always has the rights included in the procedural safeguards statement to contest the LEA's action through a state complaint, mediation, or a due process hearing.</p> <p>The previous 1999 federal regulations provided that if the LEA and parents could not agree on interim services, the LEA was obligated to implement the existing IEP to the extent possible. Although the phrase "to the extent possible" does not appear in Virginia's 2002 special education regulations, the federal language has applied. The 2006 federal regulations clarified this provision even further that during a dispute over an interim IEP or final IEP for a transfer student, the LEA is obligated to provide FAPE in consultation with the parent(s), including services comparable to the existing IEP, until the dispute is resolved. VDOE believes that the federal language does not compromise the parent's consent or participation in the IEP process, or initiating dispute resolution options, but rather, emphasizes the importance of the LEA ensuring that FAPE is provided for the child during the resolution of the dispute.</p> <p>The evaluation option applies to both in-state and out-of-state transfer students. VDOE does not believe further clarification is necessary. Parents remain an integral part of the evaluation process.</p> <p>Consistent with USDOE guidance, if an IEP is not provided it would not be appropriate to place a student in any setting other than the general education setting. Special education and</p>
1 AO (1)	Suggests clarifying whether the evaluation option applies only to out-of-state transfer students or also to in-state transfers.		
1 PO (1)	Supports the consolidation of regulations on transfer students into one section in the proposed regulations.		
1 AO 1 Att 1 Par (3)	Oppose allowing LEAs to determine whether to evaluate a student transferring into the LEA before developing and implementing a new IEP. Suggest that the parent be involved in the decision to evaluate.		
3 Adv 11 AO 3 Att 13 Cit 2 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (80)	Oppose proposal to allow LEAs to provide services comparable to those described in the child's IEP from the previous LEA and supports language currently in the regulations that requires the LEA to implement the IEP from the previous LEA until a new IEP is developed and signed by the parent.		
1 Att (1)	Supports the provision that no services are required for transfer students in the absence of the receipt of an IEP by the new school division.		

Issue	Source	Comments	VDOE Response
	1 AO 1 Att 1 Par (3)	Oppose the provision that would result in a student being placed in the general education setting if the LEA cannot obtain a copy of the IEP from the previous LEA. Suggest that the parent and LEA work together to determine what services are necessary to provide FAPE until the LEA can obtain the necessary information or until evaluations can be completed and a new IEP developed.	related services may only be provided upon evidence that the child is eligible and that consent has been provided to deliver the services. Without an IEP, these elements cannot be verified.  Currently, if an LEA has trouble securing records from a previous LEA, including an IEP, VDOE will assist. The proposed regulations clarify that this is an option for LEAs.  VDOE will recommend to the BOE to retain the parental consent requirements relative to transfer students.
	1 AO 1 Att 1 Par (3)	Suggest that interim IEPs be required to provide FAPE and include services comparable to those described in the child's IEP from the previous LEA.	
	1 AO 1 Att 1 LEA 1 Par 1 Sped Adm (5)	Support the provision requiring the LEAs to contact VDOE for assistance if LEAs cannot obtain a copy of the IEPs of transferring children from previous LEAs.	
	1 Par (1)	Opposes proposed changes because it will restrict parent involvement in ensuring autism-related services or accommodations if a student transfers to another school.	
	1 Sped Adm (1)	Supports ensuring there is no lapse in service or payment for children served under CSA when they move from one division to another.	
<b>Consent – Transfer Students</b>  8 VAC 20-81-120 A.2.  (957 comments)	15 Adv 21 AO 3 Att 3 Brd 631Cit 3 EO 2 Int 3 LAC 1 LEA Gen 2 MD 1 OT 197 Par 3 PT 3 PTA 3 SLP 4 Sped Tch 6 Stu (901)	Oppose proposed elimination of parent consent prior to providing special education and related services to transfer students since it may permit an LEA to implement an IEP that does not offer comparable services, would not require an LEA to come to consensus on service delivery at transfer. Suggest that consulting with the parent should not preclude Virginia-specific parental consent.	The proposed provisions are consistent with federal regulations and require that comparable services be provided in consultation with the parents until a new or interim IEP is developed. This provision ensures that FAPE is provided without delay upon transfer.  The consent provided on the previous IEP indicates agreement with the services. The provision of comparable services until a new or interim IEP is developed would not require additional consent. VDOE will recommend to the BOE to retain the current parent consent requirement for an interim or new IEP.

Issue	Source	Comments	VDOE Response
	1 Adv 50 Par 1 Stu (52)	Oppose restrictions on the parent's involvement in ensuring accommodations if the child transfers to another school.	
	1 Par 2 Sped Tch (3)	Support the elimination of parental consent before providing special education services for transfer students.	
	1 Par (1)	Opposes elimination of parent consent prior to providing special education services to transfer students, as that may restrict parental involvement in ensuring that the child's accommodations are provided, and it may lengthen the time, without parental consent, that a school has before they address a student's specific accommodations.	
<b>Least Restrictive Environment</b>  8 VAC 20-81-130  (294 comments)	2 Att 3 Adv 6 AO 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Clarify alternative placements in B. by either adding a definition in 20-81-10 for "alternative placements" or retain examples that are currently included and that are used in the proposed definition of "special education." Not providing a definition or giving examples is likely to lead to disputes regarding the provision of alternative placements.	<p>The placements included in the definition of "special education" are intended to provide direction on the types of placements to be considered. Specific alternatives are developed at the local level and may differ from one locality to another. The notion of LRE indicates that the less restrictive setting should be considered before more restrictive settings are discussed. Due to comments, however, VDOE will recommend to the BOE the reinsertion of federal language from 300.115(b)(1) listing alternative placements for clarification purposes.</p> <p>Placement of individual students, both in academic, non-academic, and extracurricular activities, is an IEP decision with the requirements that LRE is considered. In response to comments, VDOE will recommend to the BOE the cross reference suggested for clarity.</p> <p>It is inappropriate to regulate which types of services a locality must provide and how, since the students needs must dictate the services to be provided in each LEA. As the general education setting has become more pronounced as a special education setting, the need for more restrictive settings has decreased. The way that LEAs manage and staff these services is a local decision.</p> <p>The proposed regulations provide additional clarifications regarding placement and location, complying with all federal mandates. VDOE issued guidance to the school divisions in May 2008 regarding the application of a 4<sup>th</sup> Circuit case relative to location and placement. VODE does not believe that it is necessary to regulate this matter any further.</p> <p>To clarify that LRE applies to preschoolers, VDOE will recommend to the BOE additional language at 8 VAC 20-81-130</p>
	1 Par (1)	Opposes placing students with physical disabilities in a self-contained setting they they are capable of learning with their grade-level and age-appropriate peers.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu 1 PT (53)	Suggest adding a provision that cross references 20-81-100 H. with 20-81-130 A.2 regarding the need to consider nonacademic and extracurricular activities for LRE.	
	1 Par (1)	Suggests clarifying that providing students access to the general education curriculum in the LRE means more than just placing the students in the general education setting. Emphasis should be on the students learning and understanding the curriculum.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Suggest replacing “if” with “where” in describing that an LEA shall “where” necessary, make arrangements with public and private institutions to ensure that LRE requirements are met. Stating “where” implies the decisions to make arrangements are not simply an LEA “yes or no” determination to make arrangements but that due diligence should be made to ensure LRE is met.	.1.a. to specify that students “aged two to 21” are educated with children without disabilities.  The 2006 federal regulations clearly mandate that children with disabilities are entitled to FAPE in the LRE, and do not exclude preschool aged children with disabilities from this entitlement. [Federal Register. P 46589]
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Suggest that language be included that clarifies that LEAs have a responsibility to ensure LRE and explore alternative methods when they do not have an inclusive public preschool.	
	3 LEA Gen 13 Prin 36 Sped Adm 19 Sped Tch 1 SW 2 PO 1 SLP 1 Supt  (76)	Support distinguishing between “placement” and “location.” The IEP team determines placement, but the LEA determines the specific location for services delivery.	
	1 Par  (1)	Supports allowing children to be removed from the general education setting and provided special education and related services with children with the same disability, when required.	
	1 Par  (1)	Suggests that more needs to be done to ensure the continuum of alternate placements for students whose needs are not being met (i.e., self-contained special education classes, special education schools, promoting access to private schools for students with disabilities who are not able to learn in the environment/curriculum provided by the LEA).	
	1 Prin  (1)	Supports proposed regulations because they will unite GenEd and Sped teachers in providing effective instruction in a consistent manner that reflects the scope of the GenEd curriculum in the least restrictive environment for students.	

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests that if students are placed in a cross-categorical special education classroom, the parent(s) must be informed of other disability categories that will be placed in the classroom and have an opportunity to observe the class.	
<b>Virginia School for the Deaf and the Blind at Staunton</b>  8 VAC 20-81-140  (1 comment)	1 Sped Adm (1)	Supports repealing the requirement that school divisions and VSDB develop contractual agreements to ensure compliance with the federal and state special education requirements.	<p>It the student is eligible for services at VSDB, no contract is necessary. No additional language is necessary.</p> <p>VDOE will recommend to the BOE to delete references to the Hampton School, based on the action of the General Assembly to close the school which the BOE closed effective July 1, 2008.</p>
<b>Private Schools – Parentally Placed Private School Students</b>  8 VAC 20-81-150 C.; 8 VAC 20-81-170 E. 4. c.  (64 comments)	1 Par (1)	Recommends requiring LEAs to report to VDOE and/or process any incidence(s) of professional malfeasance on the part of an educator licensed by the State of Virginia pertaining to the suspected maltreatment of children with disabilities and/or conduct reportable under the licensure requirements which becomes known to the LEA through the implementation of IDEA.	<p>It is up to a locality to decide to report situations in which the LEA recommends revocation of license. However, the Code of Virginia requires court clerks to notify the Superintendent of Public Instruction when a person known to be licensed by the Board of Education is convicted of a felony drug crime or certain felony sex crimes involving a child victim. The Code also requires (i) local school boards to develop policies and procedures to address complaints of sexual abuse of a student by a teacher or other school board employee; (ii) the Board of Education to include requirements for the denial, suspension, cancellation, revocation, and reinstatement of licensure in its regulations; (iii) notification by the local school board to the Board of Education when a licensed employee of a school board is dismissed or resigns because of certain criminal convictions or a founded child abuse or neglect case; (iv) notification by the local department of social services to the Superintendent of Public Instruction when the subject of a founded complaint of child abuse or neglect is known to hold a license from the Board of Education; and (v) the Board of Education to revoke the license of any person who has resigned because he has been convicted of a felony, sex offense, drug offense or because he is the subject of a founded case of child abuse or neglect.</p> <p>VDOE and USDOE have provided guidance to school administrators on parentally placed private school students, which includes the fact that private schools include schools that serve preschool children and require that there be a curriculum. A child care facility is not considered a private school.</p> <p>The proposed regulations are consistent with federal regulations and guidance from USDOE regarding each LEA's responsibility</p>
3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest amending the language to include private schools that do not qualify as elementary schools. Since LEAs must spend a proportionate share to provide services to children with disabilities who have been parentally placed in private elementary and secondary schools, many preschools would not qualify as an elementary school. These students would not be eligible for receiving services.		
2 Par (2)	Recommend that following a request for screening, testing, or evaluation under IDEA, or accommodation/protection under Section 504, by a parent or teacher of a child enrolled in a private school, that the child be considered a child with a suspected disability and thereby eligible for Child Find and processing under IDEA by the LEA where the private school is located. The private school should not be authorized to determine the eligibility of a child for testing, evaluation, or special education services under IDEA.		
2 Par (2)	Recommend that if a child, who is not a resident of the LEA, is found eligible for services, that child should remain under the cognizance of the LEA until the IEP		

Issue	Source	Comments	VDOE Response
		consultative process is complete and the IEP and in-service plan has been finalized by all parties (i.e., the LEA, the private school, and the parents). The failure of any party to participate in the IEP development process will be documented in the IEP and reported to VDOE.	regarding child find, evaluation procedures, eligibility determination, and the provision of services to students including those students who are parentally placed in private schools.
	1 Par (1)	Recommends that following the development of the IEP, if the parent decides to transfer the child to the LEA of residence to receive special education services, the LEA of the private school will render full assistance to facilitate the transfer of the child. The fact that a parentally placed child is not entitled to services outside of the LEA of residence shall not preclude the requirement to facilitate the transfer of an eligible child from one public LEA to another within the State of Virginia.	According to federal regulations, it is the responsibility of the LEA in which the private school is located to evaluate and determine eligibility. As a resident of a locality, it would be the LEA where the parent resides who is responsible for developing an IEP since that would be the school division to implement the IEP. As in all cases, if a parent believes that an IEP was not developed appropriately, they have the right to file a complaint or use mediation or request a due process hearing.
	2 Par (2)	Recommend that the LEA where the private school is located, acting as an agent of VDOE, may make a formal recommendation to the parents during IEP consultation that placement in the private school may not be in the child's best interest. The recommendation shall be documented in the IEP/IFSP and may be based on the lack of highly qualified teachers in the private school, a known lack of specific resources going to the type and severity of the disability, a lack of specific guidelines in the private school to prevent the maltreatment of children by non-certified staff/teachers, or other factors which indicate that placement in a specific private school environment may not be in the child's best interests. Parents of the parentally placed child may request such a formal recommendation in order to evaluate their child's school options.	The decision to place a student in a private school is a parental decision, and it would not be appropriate to regulate a responsibility for an LEA to address appropriateness of a parental decision.  It would not be appropriate to require an LEA to be responsible for "policing" private schools. It is their responsibility to make child find activities accessible to students suspected of having a disability and making appropriate services available to identified students either through a service plan or an IEP.  The LEA where the private school is located is responsible for child find, including evaluations for students suspected of having a disability, for students enrolled by parents in private schools.
	1 Par (1)	Recommends that the LEA be responsible for reporting to VDOE any unilateral action on the part of the private school to use enrollment status or enrollment preferences to constructively deny applicable process and procedures under the IDEA or state regulation to the private school child and/or his/her parents. Such action may be considered by the LEA and/or VDOE as a basis to withhold any or all contracted services provided to the private school by the LEA under publicly funded programs and/or to suspend other forms of state licensing until corrective action, as defined by the VDOE, is taken.	
	1 Par (1)	While proposed regulations enhance the decision making process in these situations, they only give weight to the public schools and the private schools; rights of the parents are not enforceable because neither the public school nor the private school is held fully accountable.	
<b>Discipline – General</b> 8 VAC 20-81-160 A., I., J. (987 comments)	1 Adv 10 AO 248 Cit 2 Int 1 LAC 1 MD	Suggest that the regulations clarify that if a student is returned to school after a disciplinary removal, the student should be returned to the original school. Now, even if the behavior is a manifestation of the child's disability, LEAs force the child to return to a different school with the same level of services.	VDOE does not believe that additional guidance or regulatory language is required. The proposed regulations are consistent with the federal regulations and provide protections for students with disabilities while providing LEAs with the necessary flexibility to ensure the safety of students and staff and to appropriately discipline a student who has violated the Code of

Issue	Source	Comments	VDOE Response
	81 Par 1 PO 2 PT 2 PTA 2 SLP 2 Sped Tch 1 Stu  (354)		Conduct.  Both the <i>Code of Virginia</i> , at § 22.1-277, and the federal regulations permit a student's unique circumstances to be considered on a case-by-case basis when deciding whether or not to order a change in placement. VDOE will recommend to the BOE revised language to merge the requirements referenced in 8 VAC 20-81-110 F.2. with 8 VAC 20-81-160 A.
	4 Adv 2 AO 97 Cit 11 Par 1 SLP 1 Sped Tch  (116)	Suggest that the regulations clarify that if a student is returned to school after a disciplinary removal, the student should be returned to the original school if that is in the child's best interest.	The proposed regulations are consistent with the federal requirements relative to a students' placement following determination that the behavioral incident was related to the students' disability. VDOE will address additional issues related to this issue in its technical assistance document on discipline.  VDOE has issued guidance to LEAs regarding proper restraint and seclusion techniques. VDOE does not believe it is appropriate to further regulate this issue.
	1 Par  (1)	Supports regulations that exceed federal requirements by preventing LEAs from removing students repeatedly because the behaviors were not "substantially similar." It is the LEA who has sole discretion in the determination.	There is nothing in the regulations that preclude parents and school personnel from considering behavioral approaches when a student "falls behind" in class.  VDOE does not believe it is necessary to over regulate by imposing dismissal procedures or criteria for school divisions to use when referring students with disabilities to ISS. VDOE will address issues regarding ISS and bus suspensions in its revised technical assistance document on discipline, following the final approval of these proposed regulations.
	1 Par  (1)	Opposes the elimination of the discipline procedures in 8 VAC 20-81-160.	The proposed revisions are consistent with the federal requirements relative to the hearing officer's authority and responsibility when hearing disciplinary matters. The procedures in a due process hearing involve the hearing officer hearing evidence. The standard of "preponderance of evidence" remains in the due process hearing provisions.
	4 Cit 1 EO 3 Par  (8)	Generally oppose changes in this section, and support maintaining current discipline procedures. Rationales: <ul style="list-style-type: none"> <li>• They will make it easier to have a child removed if they have behavioral problems.</li> <li>• They remove protections for students with long-term behavioral problems.</li> <li>• They vest too much arbitrary authority with the LEA and encourage warehousing "problem students" rather than addressing problem behaviors through meaningful positive interventions.</li> </ul>	VDOE disagrees with the commenter that the current regulations require the hearing officer's decision within 5 days; rather, it is 20 business days. The federal regulations now require the decision to be rendered within 10 school days.
	5 AO 1 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu  (27)	Oppose the proposed provision that allows school personnel to consider any unique circumstances on a case-by-case basis when deciding whether to order a change in placement for a child with a disability that violates a code of student conduct. Suggest that the LEA personnel may abuse their discretion in disciplinary matters if this section is added.	VDOE will recommend to the BOE to reinsert "substantially" when referencing the child's behavior resulting in injury to the child or others.

Issue	Source	Comments	VDOE Response
	1 Par (1)	Suggests school administrators and SPED teachers need to be more proactive in helping a student by adding behavioral modification or changing the methodology, when a student is falling behind in a class.	
	1 SSEAC (1)	Suggests including language similar to that in 8 VAC 20-81-110 F.2. referencing strategies and positive behavioral supports already in place be included into the general description (8 VAC 20-81-160 A.) "School personnel may consider any unique circumstances on a case-by-case basis. . ." must reflect all of the considerations of the IEP team on the record.	
	3 Adv 6 AO 2 At 13 Cit 1 MD 25 Par 1 PT 2 Stu (53)	Suggest that regulations need to clarify that case-by-case consideration to remove a child must be exercised consistently with the requirements of and may not be used to circumvent the protections in 20-80-160 and 34 CFR Section 300.530. The ability to consider unique circumstances was meant to protect children from zero tolerance rules.	
	1 SLP (1)	Recommends a revision in dismissal procedures or criteria for receiving ISS	
	1 Par (1)	Opposes tactics such as allowing LEA staff to use painful restraint holds on young children for any reason.	
	1 Adv (1)	Supports clarification that returning a student to the original placement means to the original school, not simply the same level of services.	
	1 Par (1)	Supports a proposed regulation change that will enforce the same basic standards of behavior for all students. Recommends more flexibility to the schools in alternate placement decision and ability to impose a "true" short term suspension.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch	Oppose proposed language in F.2.b. allowing the hearing officer to order a change in placement to an appropriate interim alternative placement if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the student or others. Instead suggest that the LEA demonstrate the need by substantial evidence (beyond a preponderance of the evidence). The LEA should be required to meet a higher burden before a hearing officer allows it to change placement. This is not federally required and should be deleted.	

Issue	Source	Comments	VDOE Response
	1 Stu (53)		
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 2 Stu (54)	Oppose the elimination of factors in current regulations that require a hearing officer to consider in ordering a change in placement to an interim alternative educational setting for not more than 45 school days because current placement is substantially likely to result in injury to student and others, including the appropriateness of the student's current placement. This includes considering if the LEA made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services, and determine whether the interim alternative educational setting to which the child is long-term removed meets the services required during long-term removals. All of these factors remain an important part of the HO's decision, even if no longer contained in the federal regulations. See <i>Light v. Parkway C-2 S.D. (8th Cir. 1994)</i> .	
	4 AO 1 Att 8 Cit 1 LAC 1 MD 19 Par 1 PT 1 Sped Tch 1 Stu (37)	Oppose the proposed change to 10 days for a hearing officer to provide a written decision for an expedited due process decision. Suggest that the current 5 day timeline be used.	
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (79)	Oppose the proposed deletion of the word "substantially" when defining whether the behavior is likely to result in injury to self or others. Without using "substantially likely", the use of "likely" is a violation of federal regulations and unlawfully lowers the standard.	
	6 Adv 3 AO 2 Att 13 Cit 1 MD 24 Par	Suggest that under F. 1. and F. 3., when an expedited hearing results in a 45 day interim alternative placement or an extension, an FBA and BIP be required to address the conduct that resulted in the child's exclusion and develop new ones if they are over a year old. Also suggest that if the FBA/BIP is over a year old, the new ones not be allowed to be just a review of data.	

Issue	Source	Comments	VDOE Response
	1 PT 1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending P.3. to require documentation within 3 business days of changes in hearing dates since expedited due process hearings are on "a fast track", and held within 20 school days.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support the provision F. 3. that provides an LEA with the option of asking the hearing officer for a 45 school day extension of the interim alternative educational setting "when school personnel believe that the child's return to the regular placement would result in injury to the student or others." Because removals can cause harm, further removals must be carefully examined and children should not remain removed unless absolutely necessary because a return to the current placement would result in injury to the child or others.	
	2 LEA Gen 12 Prin 16 Sped Adm 7 Sped Tch (37)	Support proposed provisions regarding discipline that are consistent with IDEA 2004.	
<b>Discipline - Short-term Removals (except services)</b>  8 VAC 20-81-160 B.2. & C.6.  (55 comments)	1 Att (1)	Suggests that the IEP team, rather than the school division, determine whether discipline actions and/or short term removals constitute a pattern and change in placement.	Consistent with the federal regulations, the LEA determines whether the short-term removals constitute a pattern or a change in placement. Although school personnel may consider it administratively burdensome, nothing would prevent an LEA from using an IEP team to assist in determining whether discipline actions and/or short-term removals constitute a pattern.  USDOE limited the requirements regarding the provision of procedural safeguards notices in an attempt to balance a parent's need to understand their procedural protections, while reducing unnecessary paperwork and procedural burdens.
	1 Att (1)	Re-examine the definition of "short term removal" . A short term removal is one for only 10 consecutive days or multiple short term suspensions that do not constitute a pattern. It is incorrect to limit it to 10 cumulative school days and this restriction is inconsistent with C(2).	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 2 Stu  (53)	Suggest amending the proposed 20-81-160 C.3. to provide that if an LEA determines that a series of short-term removals is not a pattern, the LEA shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards.	Therefore, VDOE does not believe that additional changes are necessary.
<b>Discipline - Long Term Removals &amp; interim alternative education setting (IAES) placements (except services)</b>  8 VAC 20-81-160 C.  (716 comments)	4 Adv 6 AO 3 Att 262 Cit 1 EO 1 LAC 1 LEA Gen 1 MD 1 OT 64 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu  (349)	Oppose allowing schools to place a student in an interim placement until the expiration of the 45 day period. Would support returning child to IEP placement once the MDR is completed unless the IEP team determines a change in placement is required.	<p>The proposed provision related to the 45 day placement is consistent with federal regulations and is only applicable in those situations in which the student possesses a weapon, possesses or uses illegal drugs, sells or solicits a controlled substance, or inflicts serious bodily injury to another at school or a school function. In line with federal regulations, given the nature of these disciplinary actions, a child may be removed from the current education placement for the same period of time as a child without a disability, up to 45 days, regardless of whether or not the behavior was a manifestation of the child's disability.</p> <p>The proposed provisions regarding when a pattern of behavior constitutes a long-term removal are consistent with the federal regulations regarding this issue.</p> <p>VDOE will address the issue of in-school and bus suspension in its revised technical assistance document on discipline and students with disabilities.</p> <p>The other provisions mirror the federal requirements including the provision for the parents to receive procedural safeguards.</p> <p>The 45 day interim alternative placement is only for those situations in which certain discipline issues require a student to be removed from his/her IEP placement for disciplinary reasons. In this instance, a parent would have the right to request an expedited due process hearing or request mediation if they disagree with the placement. Current regulations also permit a 45 day alternative placement.</p>
	3 Adv 7 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu  (55)	Oppose proposed provision (C.5.) that allows for LEA personnel to remove a student with a disability up to 45 days for weapon or drug offenses consistent with the provisions for a child without a disability without regard to whether the behavior is determined to be a manifestation of the disability. Suggest that if it is found to be a manifestation, the child should be allowed to return to his current placement, or an alternative placement, if the LEA and parent agree otherwise.	
	1 Att  (1)	As worded, this section suggests that a student who has a weapon or drug offense may not be disciplined for more than 45 school days even if no manifestation is found. Please state that this provision does not limit the authority should the LEA impose additional discipline in cases where the misconduct is found not to be a manifestation.	
	3 Adv 6 AO 2 Att	Suggest amending the proposed 20-81-160 C.5. to address "special circumstances" to provide that "school personnel may remove a child with a disability to an appropriate interim alternative educational setting for no more than	

Issue	Source	Comments	VDOE Response
	13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu  (54)	the amount of time that a child without a disability would be subject to discipline. . . " The team should be free to consider extenuating circumstances and reduce the removal period if appropriate.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1SLP 1 Sped Tch 1 Stu  (54)	Oppose proposed changes (C.2.b.) that result in a long-term removal when short-term removals constitute a pattern due to behavior that is substantially similar to the behavior in previous incidents and supports an MDR if the child has been suspended for 10 days or more in a school year without regard to whether behavior is substantially similar.	
	6 AO 2 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu  (29)	Oppose the proposed provision (C.3.) that provides for the LEA to determine on a case-by-case basis whether a pattern of removals constitutes a change in placement, because the LEA could abuse its power.	
	1 AO 1 Att 1 Par  (3)	Support language that provides direction regarding in-school and bus suspensions and when they count toward the pattern of removal that constitutes a long-term suspension.	
	1 Par  (1)	Supports requiring that a psychologist or psychiatrist be required to be part of the FBA team that evaluates behavior and provides BIPs.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD	Request C.2.b. define "substantially similar" so that it incorporates behaviors caused by the child's disability or that had a direct and substantial relationship to it.	

Issue	Source	Comments	VDOE Response
	24 Par 1 PT 1SLP 2 Stu (54)		
	6 AO 2 Att 17 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (62)	Oppose the proposed deletion of current language that requires an LEA to notify the parents with the procedural safeguards notice not later than the date on which the decision to long-term remove the student. Support returning this language to ensure that parents will receive the procedural protections.	
	6 AO 3 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (54)	Oppose proposed language that allows an exception to the IEP team determination including parents, for an interim alternative 45 day placement.	
<b>Discipline -- Services During Removal (except FBA and BIP)</b>  8 VAC 20-81-160 B. 2. & C. 6.  (969 comments)	13 Adv 21 AO 3 Att 607 Cit 2 Int 1 LAC 1 LEA GEN 1 OT 142 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 4 Stu	Oppose eliminating the requirement to provide services designed to enable the child to progress in the general curriculum for students who are under disciplinary removal (rather than the proposed requirement that would enable the child to "continue to participate" in the general curriculum). IDEA 2004 does not contemplate the provision of "FAPE-light" or less than FAPE, even for children removed for additional short-term removals.	The proposed provisions are consistent with federal regulations and require that a child with a disability who is long-term removed: <ul style="list-style-type: none"> <li>• continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;</li> <li>• continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and</li> <li>• receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</li> </ul>

Issue	Source	Comments	VDOE Response
	(805)		<p>Consistent with the federal regulations, the proposed regulations require:</p> <ul style="list-style-type: none"> <li>that the IEP team determines the services needed for the child with a disability who has been long-term removed;</li> <li>that an LEA is not required to provide services during the first 10 days in a school year that a child is short-term removed; and</li> <li>for additional short-term removals, services are determined by school personnel.</li> </ul> <p>Students are not entitled to services during the first 10 days of suspension. Thereafter, the receipt of services is dependent on the school personnel's review with the special education teacher(s). The proposed provision is consistent with the current regulations. For those who are long-term removed (which may include cumulative suspensions), the requirement remains for the provision of services.</p>
	1 Par (1)	Oppose elimination of services to students removed for more than 10 days.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest that B.2.b. be amended to require that a child who has been removed for 10 days and experiences a subsequent removal of less than 10 school days that is not a change in placement begin receiving educational services on the 11th cumulative day of removal.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Support the proposed provision B. 2. b. that requires the LEA to make the determination about services in consultation with the child's special education teacher.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest amending 20-81-160 C.a.(1) and a.(2) to include language ensuring that a student removed long-term would receive services so as to "receive a free appropriate public education as required by IDEA". Also suggest that the services be provided "to" (rather than "that will") enable the child to progress toward meeting the IEP goals . . . " "That will" implies that LEAs can determine which services the child will receive and denies the child of FAPE.	
	1 Att 1 Par (2)	Support adding a requirement for the IEP team to determine the services provided during short term and or long-term disciplinary removal actions, irrespective as to whether or not there is any consideration for a change in placement.	
<b>Discipline -- Functional Behavioral Assessments (FBA) &amp; Behavioral</b>	4 Sped Adm (4)	Support the proposed change to remove the 11th day rule for mandatory use of FBAs and BIPs.	The proposed provisions related to the use of FBAs and BIPs are consistent with federal regulations, including the deletion of the previous requirement that a FBA be triggered by the 11 <sup>th</sup>

Issue	Source	Comments	VDOE Response
<b>Intervention Plans (BIP)</b> 8 VAC 20-81-160 C. 6. a. (3) 8 VAC 20-81-160 D. 6.  (1161 comments)	1 Sped Tch (1)	Supports proposed provisions regarding the role of parents on the FBA team.	cumulative day of disciplinary removal in a school year. VDOE believes that adequate protections are provided to students with disabilities while providing LEAs with the flexibility to develop FBAs and BIPs that are responsive to the child's unique needs. LEAs continue to be required to appropriately review and revise a child's IEP, if the child's behavior is impeding their learning or that of others. Parents remain a member of the IEP team, and therefore, may fully participate in the development of FBAs and BIPs. In addition, if the FBA meets the requirements for an "evaluation" as outlined in federal and state special education regulations, the parent would be entitled to an independent education evaluation. VDOE will recommend added language to clarify this point.
	5 Adv 11 AO 339 Cit 2 Int 90 Par 1 PT 3 PTA 3 SLP 2 Sped Tch 3 Stu (459)	Oppose the proposed elimination of the requirement that a BIP/FBA be completed or modified for any student with a disability suspended long-term.	
	7 Adv 14 AO 4 Att 16 Cit 1 CSB 1 EO 1 LAC 1 MD 71 Par 1 PT 1 PTA 1 PO 2 Psy 1 Sped Tch 4 Stu (126)	Support maintaining the current requirement that a FBA and BIP must be developed once a student with a disability has been suspended from school for more than 10 days in a school year.	
	1 AO 2 Cit 1 EO 14 Par (18)	Oppose the removal of the parents from the FBA team.	
	1 Adv 1 Cit 3 Par (5)	Support retaining all requirements in the current Virginia regulations for conducting FBAs.	

Issue	Source	Comments	VDOE Response
	1 AO (1)	FBAs should be required for students whose behavior impedes their ability to learn, or the ability of others to learn. Information should be part of the IEP instead of a document developed and may or may not be used consistently.	
	1 Adv 3 AO 1 Att 11 Cit 1 EO 1 MD 57 Par 1 PO 1 PT 1 Sped Tch 2 Stu (80)	Oppose proposed changes regarding FBAs as they reduce the parents' ability to participate in the special education process.	
	1 AO 4 Par (5)	Oppose changes regarding FBAs and BIPs as they will deny parents the right to an Independent FBA.	
	1 Par (1)	Suggests that FBA be renamed Functional Behavioral Evaluations and parents should have the ability to request IEEs if they disagree with the evaluation by the LEA. FBE should be performed before any manifestation determination can be made and for students who have been suspended for 5 or more days. BIP should be in place to address inappropriate behavior as it is important to understand why a child is not acting appropriately as soon as possible.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Request revision of D.6.a to require that the school district consider and implement positive behavioral strategies in developing and reviewing BIPs.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu  (54)	Suggest that if the child's behavior is not a manifestation of the child's disability, the IEP team should be required to review positive behavioral strategies and develop an appropriate BIP after an FBA.	
	6 Adv 12 AO 4 Att 28 Cit 2 MD 50 Par 2 PT 2 SLP 4 Stu  (110)	Suggest amending D. 6. to require an FBA and BIP be developed to address the conduct that resulted in the child's exclusion. If an existing FBA or BIP is over one year old, suggests a new one be developed and not be limited to reviewing existing data in the file.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (54)	Suggest that proposed provision D. 7., regarding when an IEP team determines that the behavior was not a manifestation of the disability, that an FBA and BIP be required to address the misconduct and if there is an existing FBA and BIP over a year old, new ones must be developed that cannot be a review of existing data.	
	1 Att  (1)	Opposes allowing schools to eliminate the requirement for the IEP team to convene to conduct an FBA and implement or modify a behavioral plan for any child under a long-term removal. Students with disabilities who have behaviors that warrant removal require greater intervention.	
	1 Cit  (1)	Requests revision to require that when a child is removed for a 45-day period, an FBA/ BIP be developed to address the conduct that resulted in the child's exclusion, and that if there is an existing FBA or BIP that is over one year old, a new one must be developed.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support proposed regulation in D.2 requiring that the MDR team convene immediately, if possible but not later than 10 school days after the decision to change the placement of the child is made.	
	1 Sped Adm (1)	Not all students with disabilities need FBAs and BIPs. To require IEP teams to meet blanket requirements is not beneficial.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Oppose elimination of current regulations that require that if a child with a BIP is removed for 10 school day and then subjected to a further short-term removal that is not a change in placement, then the BIP will be reviewed and modified if one or more IEP team members believe it necessary.	
	1 LEA 1 Sped Adm 1 Sped Tch (3)	Support proposed regulations regarding discipline that do not exceed federal regulations.	
	3 LEA Gen 1 PO 12 Prin 2 SLP 33 Sped Adm 22 Sped Tch 1 Sup (74)	Support the proposed regulations as written and opposes any additional requirements that would mandate IEP teams to develop FBAs and BIPs for every student with an IEP who is suspended.	
<b>Discipline -- Manifestation Determination Review (MDR) - (except FBA and BIP)</b>	1 Att (1)	Supports adding a requirement that would allow the IEP team and/or the parent to request a manifestation determination review for short term removals and/or discipline actions.	The proposed provisions are consistent with the federal special education regulations, and the VDOE believes the federal regulations provide sufficient parameters for the MDR decision, and that no additional clarification is necessary.

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-160 D. (227 comments)</p>	<p>1 Sped Adm (1)</p>	<p>Suggests that “relevant members of the IEP team as determined by the parent and LEA” needs to be clarified as it relates to membership of the group making the MDR determination. Must the parent and the LEA agree regarding who is a relevant member of the group?</p>	<p>The regulations do not preclude the parent or another IEP team member from requesting an IEP meeting to consider manifestation determination for disciplinary actions related to short-term removals. VDOE will clarify provisions related to membership and roles through technical assistance guidance and documents. A recent Virginia federal court case does not give parent and LEA equal status in determining the relevant members; the LEA makes the determination. This information will be included in VDOE’s technical assistance document on discipline.</p>
	<p>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)</p>	<p>Oppose the elimination of the requirement that IEP teams should determine whether the IEP is appropriate and should continue to look at the current placement.</p>	
	<p>1 AO 1 Att 1 Par (3)</p>	<p>Oppose changes to the current VA regulations which change the requirements for determining whether a student’s behavior was a manifestation of the disability. Suggest that the federal language does not fully ensure that children will not be disciplined for behaviors that either are rooted in their disabilities or that occur because their disabilities were not being adequately addressed in school.</p>	
	<p>1 AO 1 Att 1 Par (3)</p>	<p>Support proposed requirement for MDR/IEP teams to document the reasons for the answers to the each question they must address.</p>	
	<p>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)</p>	<p>Request revision of D.2 to specify that in choosing manifestation determination IEP team members, school districts must work in good faith with the parents. Parents or LEAs must have the discretion to include all individuals with special knowledge or expertise regarding the child-particularly regarding how a student’s disability can impact behavior and understanding the consequences of behavior.</p>	
	<p>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT</p>	<p>Request revision of D.3 to state that the review of all relevant information in the child’s file include all of the child’s education records, as well as new information that parents or school districts have.</p>	

Issue	Source	Comments	VDOE Response
	1 SLP 2 Stu (55)		
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Request revision of D.4 to specify that behavior would be a manifestation of the child's disability if the behavior has a direct and substantial relationship to the disability and if the disability significantly impairs the child's behavior control.	
<b>Discipline – Protection for Students Not Yet Eligible</b>  8 VAC 20-81-160 H.  (190 Comments)	3 Adv 3 Att 12 AO 14 Cit 1 EO 1 LAC 1 MD 1 PO 1 PT 41 Par 1 SLP 1Sped Tch 2 Stu (82)	Oppose the proposed deletion of language indicating that the LEA had knowledge if "the behavior or performance of the student demonstrates the need for these services," because these factors are important for schools to consider.	<p>The language in the proposed regulations regarding when a LEA is deemed to have a "basis of knowledge" was specifically developed to comply with IDEA 2004, and the factors identified in the statute.</p> <p>USDOE, in response to a similar comment regarding the insertion of a timeline regarding when a child has previously been evaluated and determined ineligible, and whether or not the LEA has a "basis of knowledge," stated, "Many commenters recommended that an evaluation and eligibility determination that is more than three years old not prevent deeming an LEA to have a basis of knowledge...The intent of Congress in revising section 615(k)(5) of the Act was to 'ensure that schools can appropriately discipline students, while maintaining protections for students whom the school had valid reason to know had a disability' and that the provisions in the Act should not have the 'unintended consequence of providing a shield against the ability of a school district to be able to appropriately discipline a student.' (S. Rpt. No. 108–185, p. 46). We are not including time restrictions, as suggested by the commenters, to the exceptions in paragraph (c) of this section because we believe such restrictions are unnecessary and could have the unintended consequence of hindering the school's ability to appropriately discipline a child." (Federal Register, p. 46727) VDOE supports this position, and similarly, declines to insert the recommended language.</p>
	3 Adv 6 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 Stu (54)	Federal regulations deem an LEA knowledgeable about a child's disability for discipline purposes if the parent provides notice of his/her concerns that the child needs special education and related services. A child should not forego the protection of knowledge just because a parent cannot write or has a disability preventing a written statement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP	Suggest clarifying the provision indicating the LEA would not have knowledge if the child had previously been evaluated to say that "(b) the child has been evaluated within the last 3 years . . ." and determined ineligible for special education and related services.	

Issue	Source	Comments	VDOE Response
	2 Stu (54)		
<b>Educational Records</b> 8 VAC 20-81-170 A.1.a. and G. (59 comments)	3 Adv 6 AO 2 Att 15 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (56)	Suggest amending G.1.a. to require that an LEA must comply with a request for educational records within 5 business days, versus 45 calendar days. 45 calendar days is unnecessarily lengthy and parent requests for records are usually time sensitive.	<p>The requirements include language which requires the LEA to provide the records without unnecessary delay and before certain meetings if requested. The 45 days, consistent with FERPA requirements at §99.10(b), is the latest that LEAs must provide information, which could require a search in another location if the files are older and no longer being used.</p> <p>There are state requirements that govern when files may be destroyed.</p> <p>It is up to an LEA to determine where files are located as long as it is clear in the school's record where other records are located, such as a clinic.</p> <p>VDOE agrees with the commenter's suggestion regarding the preservation of e-mails in a child's education record. The electronic correspondences (e-mails and facsimiles) related to the child regarding such matters as IEP meetings are to be maintained in the child's education record. VDOE will recommend to the BOE revised language to include this fact. VDOE does not wish to regulate matters of testing documents. This issue, including test protocols, is under VDOE's Guidelines for the Management of the Student's Scholastic Record.</p> <p>VDOE agrees that additional language is needed regarding termination of rights.</p>
	1 Par (1)	Suggests including a requirement preventing LEAs from destroying e-mail and testing education records prior to due process proceedings.	
	1 Par (1)	Suggests including a requirement that all education records be available in one location for parental review.	
	1 Att (1)	Suggests rather than simply advising of a termination of rights, the parents should be required to produce the legal documentation. Something this important should not be entrusted to an oral conveyance.	
<b>Independent Educational Evaluation (IEE)</b> 8 VAC 20-81-170 B. (55 comments)	6 AO 3 Adv 2 Att 14 Cit 1 MD 25 Par 1 PT 1SLP 2 Stu (55)	Oppose proposed 2e, "A parent is entitled to only one IEE at public expense." It could be interpreted as more restrictive than the federal regulations in that it appears to limit the entitled to an IEE to a single component, rather than the comprehensive evaluation.	An evaluation is a process by which it is determined whether a child has a disability and the nature and extent of the special education and related services that the child needs. Historically, in Virginia, there have been questions about the nature and frequency of the parent's entitlement for an IEE. Specifically, if multiple assessments were completed as part of the evaluation process (ie., psychoeducational, sociological, speechlanguage), was the parent entitled to a separate IEE for each assessment (ie. component) which was completed during the evaluation cycle, or was the parent required to select only one of the assessments for purposes of an IEE? The proposed regulations were intended to clarify that a parent is entitled to an IEE for <u>each</u> assessment that was completed during the evaluation process, with which the parent disagrees. In accordance with federal regulations, an LEA may not limit a parent's request for an IEE to one section of a specific assessment or evaluation component.

Issue	Source	Comments	VDOE Response
<p><b>Prior Written Notice (PWN)</b> 8 VAC 20-81-170 C. (892 comments)</p>	5 Adv 15 AO 3 Att 548 Cit 1 Con 2 EO 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 142 Par 1 PO 2 PT 2 PTA 3 SLP 3 Sped Tch 3 Stu (736)	Oppose proposed limitations to providing prior written notice and support the requirement for prior written notice as often as it is currently, including at the time parental consent is obtained.	VDOE disagrees with adding requirements to this section. The 1999 federal regulations included a provision that specified that if the prior written notice related to an action that also required parental consent, the LEA could provide notice at the time of requesting parental consent. This language was removed from the federal regulations and that change was mirrored in the proposed Virginia regulations. Because parental consent cannot be requested without the provision of prior written notice, the result does not limit or eliminate the need to provide prior written notice when the LEA proposes or refuses an action that requires parental consent. Given that the subject matter of the prior written notice will vary depending on the unique circumstances, so to may the timing for the provision of prior written notice need to vary. Therefore, it is not practical to adopt a specific timeline for the provision of prior written notice.
	4 Adv 2 AO 32 Cit 6 Par 1 SLP (45)	Oppose the proposed limitation on when LEAs must provide PWN, including when the IEP team cannot come to consensus.	
	1 Par (1)	Opposes any change that would allow the school to change services without parental notification.	
	1 Cit (1)	Supports amending C. to provide that prior written notice must be given to parents 5 business days before the action proposed instead of the phrase "reasonable time".	
	1 AO (1)	Suggests the draft regulations regarding PWN dilute the federal requirements.	
	1 Par (1)	Supports including language that if an LEA decides not to evaluate a child at the parent's request, PWN be given, indicating the availability of an IEE at public expense, and notice that the LEA may pursue due process if it believes the parents IEE request is unfounded.	
	3 Adv 6 AO	Recommend amending C. 1. to note that PWN shall be given to the parent within a reasonable time, "but in no case more than 24 hours before or after the local	

Issue	Source	Comments	VDOE Response
	2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	educational agency...." Providing a specific timeline will alleviate misunderstandings and prevent a delay in filing for Due Process, if necessary.	
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the proposed deletion of the word, "test" from the list of items required to be described and used as a basis for the proposed or refused action. Suggest that the LEA should be able to use all types of evaluation procedures, including tests taken by the child.	
<b>Procedural Safeguards Notice</b>  8 VAC 20-81-170 D.  (133 comments)	1 Par (1)	Opposes any changes to the current procedural safeguards.	The changes regarding the provision of the Procedural Safeguards Notice comply with statutory language outlined in IDEA 2004, and its federal implementing regulations, which was intended to balance a parent's need to understand their procedural protections, while reducing unnecessary paperwork and procedural burdens. Therefore, VDOE does not believe that additional changes are necessary.
3 Adv 11 AO 3 Att 15 Cit 1 EO 1 LAC 38 Par 1 PO 1 SLP 1 Sped Tch 1 MD 1 PT 2 Stu (79)	Oppose the deletion of the requirement to provide the procedural safeguards notice with each notification of an IEP meeting and for each reevaluation of the child. It is important for parents to be fully aware of their rights.		
3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT	Support revising the language in D. 1.e. "On the date on which the decision is made to take a disciplinary action, including a disciplinary removal..." rather than "to make a disciplinary removal."		

Issue	Source	Comments	VDOE Response
	1 SLP 2 Stu (53)		
<b>Consent – General</b> 8 VAC 20-81-170 E (750 comments)	1 AO 3 Par (4)	Support current parent consent provisions.	<p>Because Virginia has long required parent consent for situations not required by federal regulations, the Board of Education had proposed that all consent provisions remain except for full or partial termination of services. However, in response to the public comments on parent consent, VDOE will recommend to the BOE to retain the current parent consent requirements.</p> <p>The definition of parent is consistent with state and federal law and regulations and includes foster parents under specified conditions.</p> <p>The changes regarding the LEA's responsibility to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services was proposed to comply with changes in the federal regulations.</p> <p>VDOE does not believe that it is feasible to require that every "agreement" be in writing. Specific guidance from USDOE has indicated that written agreements are not always required. However, parties may opt to reduce their agreement to writing to memorialize their discussions.</p>
	2 Par 1 Sped Tch (3)	Oppose the elimination of parental consent prior to providing special education services to students with disabilities.	
	10 Adv 4 AO 3 Att 2 Brd 81 Cit 3 EO 2 Gen ed 1 Indiv 1 LAC 3 LEA Gen 154 Par 1 PO 2 Psy 1 SLP 1 Sped Adm 2 Sped Tch 2 Stu (273)	Oppose the elimination of the parent's right to consent in the IEP process, including the parent's right to consent to any change in their child's IEP, and before IEP services are partially or completely terminated.	
	1 Adv 10 AO 2 Att 253 Cit 2 Int 1 MD 106 Par 1 PO 2 PT 3 PTA 2 SLP 2 Sped Tch 2 Stu (387)	Support maintaining current Virginia-specific consent provisions, including consent for initial eligibility, initial implementation of an IEP and any changes in an IEP, and for termination of special education and related services.	

Issue	Source	Comments	VDOE Response
	2 Cit 1 Guid 1 Prin 1 Psy 3 Sped Adm 4 Sped Tch 1 SLP (13)	Support parent consent only consistent with federal requirements. Oppose parent consent in excess of federal requirements. These requirements are particularly burdensome in the termination of students whose assessments and progress no longer warrant special education, causing significant personnel and financial impact on LEAs.	
	1 Sped Adm (1)	Supports the proposal that foster parents are not allowed to provide consent for services unless rights of natural parent are terminated. To allow such is a conflict of interest. Foster parents receive money for keeping foster children and regardless of their level of commitment, a surrogate should be appointed.	
	1 Adm 1 Par 2 Prin 6 Sped Adm 2 Sup (12)	Oppose parental consent in excess of federal requirements. These requirements are particularly burdensome in the termination of students, whose assessments and progress no longer warrant special education, causing significant personnel and financial impact on LEAs.	
	1 Cit (1)	Supports reinserting language from current E. 1. into proposed regulations regarding inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.	
	3 Adv 2 Att 6 AO 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Support Proposed regulation E. 1. f. regarding the requirement for parental consent before inviting a representative of a participating agency to an IEP meeting.	
	1 Sped Adm (1)	Opposes proposed changes that include the phrase, "without parental consent."	
	1 AO (1)	To avoid conflicts, supports the inclusion of language that any "agreement" must be in writing, not just "consent."	

Issue	Source	Comments	VDOE Response
<b>Consent – When not required</b>  8 VAC 20-81-170 E.2.  (3 comments)	3 Par (3)	Oppose the proposed provision that does not require consent for the review of existing data as part of an evaluation/reevaluation, and for screenings to determine appropriate instructional strategies. Support requiring parental consent in these cases because they are IEP team considerations.	The proposed provisions are consistent with federal regulations and allow the use of existing data to inform IEP decisions. Therefore, VDOE does not believe the suggested language is necessary.
<b>Consent -- Documenting Reasonable Measures</b>  8 VAC 20-81-170 E. 8.  (1 comment)	1 Sped Adm (1)	Supports the continued requirement for parental consent for revisions to an IEP unless parents do not respond or participate when requested to address changes needed to the IEP. Suggests that regulations be specific about attempts required before being able to move ahead with changes.	VDOE does not believe that the suggested change is necessary. Local policies and procedures will need to detail how a locality will document reasonable measures to attain parent consent. The basic framework in these proposed regulations is required in current practice and provides sufficient detail for LEAs to follow.
<b>Consent – FBA</b>  (764 comments)	7 Adv 12 AO 3 Att 589 Cit 2 Int 1 MD 1 OT 127 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 2 Stu (754)	Oppose the development of an FBA without parental consent.	Consistent with federal regulations and guidance from USDOE, the proposed regulations continue to require parental consent for a functional behavioral assessment involving the LEA obtaining as new evaluations, unless the FBA is a review of existing data.  Consistent with federal regulations, parents continue to be a vital member of the IEP team, and therefore, an important participant in the development and review of FBAs.  VDOE will recommend to the BOE additional language in 8 VAC 20-81-160 D. clarifying when an FBA involves an evaluation.
	1 Adv 2 Brd 1 Cit 2 EO 4 Par (10)	Oppose the elimination of the parents as a participant in the development of the FBA/as a member of the FBA team.	
<b>Insurance – Use of Private or Public Insurance, including Medicaid</b>  8 VAC 20-81-170 E.1.e., & F.; 8 VAC 20-81-300  (54 comments)	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu	Support implementing 8 VAC 20-81-300 as proposed.	This provision reflects the federal regulations.

Issue	Source	Comments	VDOE Response
	(54)		
<b>Procedural Safeguards – Electronic Mail and Signature</b>  8 VAC 20-81-170 H. and I.  (5 comments)	4 Par  (4)  1 Par  (1)	Support the option to make notices of due process and the procedural safeguards notice available electronically.  Supports the option for electronic signatures.	These provisions should provide greater flexibility, and therefore, are intended to improve the quality of communications between the parties, while eliminating any unnecessary exchange of paper documentation.
<b>Age of Majority – Transfer of Rights</b>  8 VAC 20-81-180  (110 comments)	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu  (55)  3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu  (55)	Support amending the timeline for initial eligibility for special education if the student will be reaching the age of majority to include 60 calendar days, rather than 65 business days to be consistent with previous recommendations regarding the timeline for eligibility determination.  Support retaining the current requirement for a statement of notification to be provided to both students and parents at least one year prior to the student's 18 <sup>th</sup> birthday noting that educational rights transfer to the student at the age of majority. The proposed regulations require that a statement be included in the child's IEP, but it does not state that a parent has been notified or include a timeline for the notification.	The 65 business day timeline is one which has a long-standing history in Virginia. To shorten this timeline would not allow LEAs adequate time and would have major fiscal implications.  The proposed regulations require notification via the IEP meeting and are consistent with federal regulations. If parents are not present at the IEP meeting, they are entitled to receive a copy.  As noted in the IEP provisions, VDOE agrees and has inserted language regarding parental notification.
<b>Dispute Resolution – General</b>  (3 comments)	1 Par  (1)  1 Par  (1)  1 Par  (1)	Supports restricting VDOE from misrepresenting federal citations.  There should be a consequence for giving false information during a due process or with regard to a complaint.  Supports LEAs being required to provide information requested by the hearing officer or compliance specialist in a timely manner or the LEA's evidence would not be considered.	VDOE does not believe it is necessary to further regulate this area.
<b>Mediation</b>	1 Att  (1)	Suggests requiring VDOE to review and approve mediation agreements for compliance with its regulations as to the rights of the child.	The proposed provisions are consistent with the federal regulations, including the requirement for confidentiality and the

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-190 (127 comments)</p>	<p>1 Att (1)</p>	<p>Suggests that VDOE serve as an optional mediation agreement enforcement entity as an alternative to parents going to court.</p>	<p>use of state or federal courts to enforce mediation agreements. While States have the option of allowing resolution agreements and mediation agreements to be enforced through other mechanisms, it is not feasible for VDOE to assume this responsibility due to the specific nature of contract law that is presumed by mediation agreements.</p> <p>Consistent with federal regulations, if the mediation session concludes with a written, signed agreement, that agreement is legally enforceable in any state or federal court of competent jurisdiction.</p> <p>Consistent with federal regulations, VDOE does not support allowing discussions occurring during mediation to be used in due process hearings since this would inhibit the success of the mediation process.</p> <p>It would be inappropriate for the mediator to attend school meetings subsequent to mediation. The role of the mediator is to facilitate an agreement which is then implemented by the two parties.</p> <p>Language is already included indicating that mediation cannot be used to deny or delay a due process hearing.</p>
	<p>1 PRC (1)</p>	<p>Supports confidentiality in mediation.</p>	
	<p>2 Sped Adm (2)</p>	<p>Support that VDOE require parties to sign a confidentiality pledge to ensure that decisions during mediation remain confidential, irrespective of the mediation results.</p>	
	<p>4 Par (4)</p>	<p>Support that mediation should conclude with a legally binding agreement.</p>	
	<p>4 Par (4)</p>	<p>Oppose the requirement that discussions occurring during mediation cannot be used in a due process hearing or civil proceeding.</p>	
	<p>3 Adv 7 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP 2 Stu (57)</p>	<p>Suggest adding language that would allow mediators to attend school meetings subsequent to mediation upon agreement between parents and schools. This involvement would help facilitate agreement and avoid the need for further mediation or later litigation.</p>	
	<p>3 Adv 7 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP 2 Stu (57)</p>	<p>Suggest adding the following language regarding mediation: "Such a meeting cannot be used to delay or deny a due process hearing." This addition would provide clarity related to this requirement.</p>	
<p><b>Complaints Process</b> 8 VAC 20-81-200</p>	<p>1 Att (1)</p>	<p>Suggests that the complaints process be amended to allow parents to use it as a dispute recourse for discipline matters instead of making the only dispute option a due process hearing.</p>	<p>The proposed regulations mirror the federal regulations. Because of the complexity of issues related to certain discipline cases, the use of the due process system may be the most appropriate. However, any alleged violation of the state or</p>

Issue	Source	Comments	VDOE Response
(93 comments)	1 AO (1)	Suggests that the homeless liaison be included in determining the available contact information for complaints.	federal regulations may be reviewed using the complaint resolution procedures. The complaint process would determine whether or not procedural violations occurred during substantive determinations.
	14 AO 3 Att 16 Cit 1 LAC 1 EO 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (82)	Oppose proposed deletion of language that requires LEAs to respond and initiate corrective action within 15 business days from the date of notice of noncompliance. Without a timeframe, the LEAs could improperly delay taking corrective action.	Consistent with federal regulations, it is the responsibility of the person filing the complaint to provide accurate contact information for the child about whom the complaint is filed.  VDOE will take under advisement the posting of complaint decisions.  In accordance with federal regulations, exceptions for timelines have not been included.  The proposed regulations indicate the right of each party to appeal the decision to VDOE within 30 days of the issuance of a decision. Procedures will be developed by VDOE and need not be included in the regulations.
	2 Par (2)	Suggest adding a requirement for VDOE to post Letters of Finding on the web-site.	The facts associated with complaints may be used in due process hearings. Hearing officers have the authority to determine findings in due process hearings on issues raised in a complaint.
	1 AO 1 Att 1 Par (3)	Oppose eliminating the exceptions to extending time limitations for complaints beyond one year and suggest maintaining the exceptions currently in the regulations that allows VDOE to determine that a longer period of time is reasonable under certain circumstances.	Inappropriate conduct on the part of a teacher is the responsibility of the LEA and the local School Board. As such, they have the right and responsibility to report an incident which is suspected to be abusive to the Department of Social Services and take appropriate action. Additionally, local school boards may petition the BOE for licensure revocation of school personnel for improper conduct, under Virginia Teacher Licensure requirements.
	1 Att (1)	No procedures for appeals are included and would need to be adopted through the regulatory process. This provision will not affect the authority of the courts to review the decisions in the case of appeals to court.	Separate regulations for private schools dictate the parameters of their responsibility. As they pertain to these regulations, the LEA responsible for the student has the responsibility for ensuring FAPE for the child. If the private school is not fulfilling its responsibilities, it is the responsibility of the LEA to reconcile issues or secure another private location for the student.
	1 Cit (1)	Suggests permitting state complaints to be admissible in due process hearings for both parents and LEAs.	The restoration of the language outlined in the 2002 regulations at 8 VAC 20-80-78 D. 4. is not appropriate. Specifically, depending on the nature of the issues involved in a parent's complaint VDOE outlines specific timelines for the initiation of corrective action that varies depending on the nature of the needed corrective action.
	1 Par (1)	Suggests adding the following clarification, "The LEA is responsible for reporting to the SEA and/or processing any incidence(s) of professional malfeasance on the part of an educator licensed by the State of Virginia pertaining to the suspected mistreatment of children with disabilities and or conduct reportable under license requirements which becomes known to the LEA through the implementation of the IDEA."	
	1 Par (1)	Suggests adding the following, "The LEA is responsible for reporting to the SEA any unilateral action on the part of the private school to use enrollment status or enrollment preferences to constructively deny applicable process and procedures under the IDEA or state regulation to the private school child and/or his/her	

Issue	Source	Comments	VDOE Response
		parents. Such action may be considered by the LEA and/or the SEA as a basis to administratively withhold any or all contracted services provided to the private school by the LEA under publicly funded programs and/or to suspend other forms of state licensing until corrective action, as defined by the SEA, is taken.”	
<b>Due Process – Moving Administration from Supreme Court of VA to VDOE</b>  8 VAC 20-81-210 A. & B.  (1077 comments)	21 Adv 27 AO 8 Att 708 Cit 4 EO 2 Int 2 LAC 1 LEA Gen 1 MD 1 OT 165 Par 1 PO 1 Priv 1 Psy 2 PT 4 PTA 4 SLP 1 Sped Adm 4 Sped Tch 8 Stu (966)	Oppose moving the management of hearing officers from the Supreme Court to VDOE. Rationales: <ul style="list-style-type: none"> <li>• Concern about the appearance of a conflict of interest. VDOE is not in a neutral position between the parties.</li> <li>• Due process must be impartial, and under VDOE, the due process system would be perceived as being aligned with LEAs, and therefore, “tainted.”</li> <li>• To rule on behalf of a parent, the hearing officer would have to rule against its employer, VDOE.</li> </ul>	<p>The proposed changes were responsive to the significant number of concerns from parents, school personnel, parent and school board attorneys, Virginia Code Commission, and hearing officers regarding the ineffectiveness of the current hearing officer system. Concerns relate to the management of hearings; violation of timelines; poorly written decisions; and hearing officers not being assigned enough hearings to maintain the necessary knowledge of special education law.</p> <p>The proposed revision was intended to strengthen VDOE’s ability to manage a more efficient system and increase training requirements, while maintaining hearing officer impartiality. Specifically, to improve the recruitment, training, and evaluation of hearing officers and in order to streamline the process for a locality to secure the services of a hearing officer, the proposed regulations would have shifted responsibility for the implementation of the due process hearing system exclusively to VDOE, rather than sharing the responsibility with the Supreme Court of Virginia. To ensure compliance with federal due process requirements, while maintaining an effective and efficient due process system, VDOE’s responsibilities would have included:</p> <ul style="list-style-type: none"> <li>• the establishment of procedures for recruitment, selection, and appointment;</li> <li>• training; and</li> <li>• evaluation and determinations regarding continued eligibility to serve as a Special Education Hearing Officer.</li> </ul> <p>Having the responsibility for the system would have provided VDOE with the flexibility and the authority to provide and require needed training in special education regulations and case law without the obstacles that exist from a two-agency system.</p> <p>However, given the public comment received on the issue, and to avoid even the appearance of impropriety, the due process system, as structured for administrative purposes in the 2002 regulations, will remain in effect.</p>
	1 Att 1 LEA 3 LEA Gen 1 PO 11 Prin 31 Sped Adm 16 Sped Tch 2 Sup 1 SW (67)	Support the movement of responsibility for special education hearing officer system from VA Supreme Court to VDOE. Rationales: <ul style="list-style-type: none"> <li>• It would provide for improved effectiveness and greater efficiency.</li> <li>• It ensures the timely appointment of a hearing officer and enables timelines to be met.</li> </ul>	
	1 SSEAC (1)	Supports the transfer of the administration of the due process system from the VA Supreme Court to the VDOE with the stipulation that there be a parent advisory role in the selection/training process such as is used with DRS.	
	1 Adv 1 EO 38 Par 1 Sped Tch 1 Stu (42)	Oppose not requiring impartial due process hearings, including by removing “essential systemic safeguards.”	

Issue	Source	Comments	VDOE Response
	1 HO (1)	Supports the appointment of hearing officers by VDOE to ensure the simultaneous appointment of a hearing officer and prevent the current lapse in time between the Office of the Executive Secretary providing the name of the hearing officer to the LEA and the notification of the Hearing Officer. This will also prevent "hearing officer shopping" with LEAs who consider an unanswered telephone call to mean the hearing officer is "not unavailable".	
<b>Due Process -- Hearing Officers</b>  8 VAC 20-81-210 B, F.4., F.5., G.  (547 comments)	1 HO (1)	Supports the re-designation of hearing officers at all levels, Federal, State, Agency, etc. in favor of the term, "Virginia Administrative Law Judge."	It is not practical or feasible to adopt the commenter's recommendation to change the title of hearing officers since the term "hearing officer" is used in state code and in federal regulations.  Since the Supreme Court of Virginia will continue to administer the hearing officer system, they will remain responsible for the selection criteria, training, and appointment requirements. VDOE will consider options to present to the Supreme Court of Virginia on these requirements.  The regulations relative to due process are based on the IDEA and its federal implementing regulations. Therefore, VDOE does not believe that further regulations are required.
1 Cit 1 SLP (2)	Oppose the change in terminology for Hearing Officers, and supports retaining the term and definition for "Impartial Hearing Officer."		
2 Par 1 Sped Tch (3)	Oppose training of Hearing Officers through VDOE, rather than an outside provider.		
1 Par (1)	Supports revising the regulations regarding hearing officer training, especially since Virginia's hearing officers are often trained by attorneys who represent school boards/systems.		
1 Par (1)	Suggests that all training for hearing officers sponsored or provided by VDOE be open to the public.		
1 Par (1)	Supports attempts to address the inadequacies in the current system through ensuring a training program for HOs.		
6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 27 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu	Oppose deletion of language that requires that hearing officers ensure impartiality and decline appointment if an employee of VDOE or the LEA involved in the education of the child.		

Issue	Source	Comments	VDOE Response
	(52)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 2 Stu (52)	Request revising proposed F.4.b. so that hearing officers cannot be employees of any school district, not just the school district involved in educating the child.	
	1 Par (1)	Supports including a provision to ensure that hearing officers have never had previous dealings with either party involved in the due process.	
	1 Par (1)	Suggests that hearing officers be required to file a Statement of Economic Interests substantially similar in form to that required by the VA State and Local Government Conflicts of Interest Act. This would allow parents to challenge the assignment of a hearing officer on the basis of a potential conflict of interest.	
	1 Par (1)	Suggests that more qualified attorneys need to become hearing officers and they need to demonstrate that they know the regulations before they hear a case. Equal representation of attorneys who have represented parents and school systems need to be hearing officers. Hearing officers should stay awake during entire proceeding.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending B. 1. a. to require that hearing officers have demonstrated knowledge of, and comply with, the Canons of Judicial Conduct for the Commonwealth of Virginia. These Cannons safeguard the integrity and ethics of judges, ensuring a fair hearing process.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD	Support amending B. 3. to indicate that hearing officers may be disqualified and removed for failing to be impartial. Alternatively, support amending the regulations to include that if a hearing officer has been found to have failed to be impartial two or more times, he/she shall be removed permanently.	

Issue	Source	Comments	VDOE Response
	24 Par 1 PT 1 SLP 2 Stu (54)		
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending B. 3. to indicate that hearing officers may be disqualified and removed for failure to comply with the Canons of Judicial Conduct for the Commonwealth of Virginia.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 23 Par 1 PT 1 SLP 2 Stu (52)	Support amending B.3.c.(1) to indicate that a hearing officer may be disqualified from a specific case if they cannot be fair and impartial.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending F.3.b. to provide that in an expedited hearing, a decision to disqualify a HO must be made with sufficient time for the hearing to proceed within the requisite 20 school days. This prevents the harm to the child caused from inappropriately changing his/her placement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu	Support amending F.4.c. to provide that persons who are employees of elementary and secondary school related agencies or organizations cannot serve as HOs. If it is important to protect LEAs against employees of disability rights organizations from serving as HOs, it is equally important to protect parents from hearing officers who are employees of school related agencies or organizations.	

Issue	Source	Comments	VDOE Response
	(53)		
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support the inclusion of proposed B. 1. a. (1)-(5), and (7).	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending J.4. to require that LEA-maintained lists of hearing officers and qualifications to be shared with parents/the public upon request.	
	1 Sped Adm (1)	Supports the VDOE ensuring timely appointment to a special education case and rigorous training and standards	
	1 Sped Adm (1)	Supports the proposed regulations regarding hearing officers, as written.	
	1 Sped Adm (1)	Supports clarification regarding the duration of the hearing officer's authority.	
<b>Due Process - Implementation Plan</b> (826 comments)	12 Adv 24 AO 4 Att 600 Cit 1 Con 1 EO 2 Int 2 LAC	Oppose the proposed removal of the requirement to develop and submit an implementation plan within 45 days of the completion of a due process hearing. Rationales: <ul style="list-style-type: none"> <li>• Without them, parents will be less likely to have written guidance or timelines from the LEA regarding corrections;</li> <li>• It is important not to delay the implementation of the hearing officer's decision; and</li> <li>• Without them, it could require additional legal costs to ensure implementation.</li> </ul>	Removing this requirement would not impact adversely an LEA's responsibility for implementing required actions resulting from a due process hearing and would eliminate unnecessary paperwork when no action is required. VDOE continues to be responsible for ensuring that due process hearing officers' decisions are implemented. However, VDOE will recommend to the BOE language revision wherein the implementation plans would be required to be developed within 45 days of the

Issue	Source	Comments	VDOE Response
	1 LEA Gen 1 MD 1 OT 159 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 4 Stu (822)		<p>completion of a due process hearing in only those cases that are fully adjudicated.</p> <p>Depending on the determination, 30 days may provide insufficient time for the development of a plan for a hearing officer's determination.</p>
	1 Par (1)	Supports a 30 day timeline for the implementation of due process determinations and court orders.	
	1 LEA 2 Sped Adm (3)	Support proposed removal of the implementation plan following a due process decision or the withdrawal of a hearing request because this will reduce paperwork and work load for administrators.	
<b>Due Process – General</b> 8 VAC 20-81-210 C.-O., Q.-S. (2456 comments)	1 HO (1)	Suggests that hearing officers be given limited power to hold attorneys in contempt by assessing a fine and possible suspension for 30 days.	It is not feasible to adopt the commenter's recommendation since there is no statutory authority to provide contempt power to administrative hearing officers.
	1 AO (1)	Suggests that the homeless liaison be included in determining the available contact information for filing for due process.	Consistent with federal regulations, it is the responsibility of the person requesting the due process hearing to provide contact information for the child's parents.
	4 Adv 11 AO 2 Att 12 Cit 1 EO 1 LAC 1 MD 71 Par 1 PO 1 Psy 1 PT 1 SLP 1 Sped Tch 3 Stu (111)	Oppose allowing the local educational agency to raise issues at the hearing that were not raised in the due process request when they are not the initiating party. Believes alternatively that parents should also have the same right when they are not the initiating party.	<p>Both parents and LEAs have been afforded all procedural protections for due process which are required by IDEA and the federal regulations. The hearing officer, however, is provided discretionary authority to allow the LEA to raise issues based in the specific circumstances of the case. This allows the hearing officer to consolidate issues in order to make an appropriate decision for the sake of the student. However, VDOE agrees with the position that alternatively, parents should have the same right when they are not the initiating party. VDOE will recommend this change to the Board of Education.</p> <p>The authority of hearing officers is limited to those specified in the federal regulations. Parents have other remedies for the recovery of expert fees.</p>
	3 Adv 6 AO 2 Att 13 Cit	Support amending proposed regulation D.6.a. to strike language, "If the local educational agency is not the initiating party to the due process hearing proceeding," and to revise the remaining provision to state, "The Special Education Hearing Officer has the discretionary authority to permit the recipient of	<p>In 2005, the U.S. Supreme Court allocated the burden of proving the effectiveness of a student's IEP to the party challenging it. <i>Schaffer v. Weast</i>, 44 IDELR 150 (U.S. 2005). The High Court's ruling requires that, in an administrative hearing challenging the effectiveness of a student's IEP, the party challenging the IEP must show it does not appropriately address the student's</p>

Issue	Source	Comments	VDOE Response
	1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	a due process hearing request to raise issues at the hearing that were not raised in the initiating party's request for due process in light of particular facts and circumstances of the case." The proposed regulation is one-sided and inconsistent with federal law. Permitting even treatment also promotes judicial economy by allowing all related claims to be heard in the same proceeding.	individual needs. VDOE does not believe it is appropriate to include regulations to the contrary. However, IDEA and its federal implementing regulations do outline a procedural process for determining whether or not a child's behavior is a manifestation of the disability. Therefore, it is consistent with federal mandates to require that LEAs demonstrate that they held a manifestation determination hearing in accordance with the appropriate procedures.
	1 SSEAC (1)	Suggests that the regulations stipulate that neither party (parent or LEA) referenced in 8 VAC 20-81-210 D.6. be allowed to raise issues not previously indicated in the notice of the due process hearing.	The ability of a hearing officer to dismiss a hearing "with prejudice" when a parent withdraws would result in little incentive for the parties to mediate or otherwise resolve disputes. In addition, VDOE does not believe it should regulate when a hearing officer can dismiss a request for due process "with prejudice" or "without prejudice". Each case must be reviewed independently and on the facts therein. Only the hearing officer will know those facts in each particular situation.
	1 EO 7 Par (8)	Suggest that all due process rights and obligations should be afforded equally to both parents and school systems. Rationales: <ul style="list-style-type: none"> <li>• If school systems act "in loco parentis" then the school system and the parents should have the same rights in bringing hearing and court requests regarding educational decisions.</li> <li>• To do otherwise, limits parental involvement in the due process system.</li> </ul>	In accordance with the federal special education regulations, due process is one of three dispute resolution options that are available to a parent when a dispute arises. Parents are not required to use due process. They may also access mediation or the complaints system.
	3 Par (3)	Support allowing parents to recover expert fees when they win.	Timelines regarding the appointment of hearing officers were changed to ensure overall fairness in the process.
	1 Cit 3 Par (4)	Support placing the burden of proof on the school division in all due process hearings. Rationales: <ul style="list-style-type: none"> <li>• LEA has a statutory obligation to comply with the objective of the Act and the exclusive means of educational knowledge and information.</li> <li>• Schools have the obligation to provide FAPE in exchange for the federal funding they receive.</li> <li>• It leads to efficient use of judicial time and resources creating desirable incentives for school districts to articulate and communicate their educational practices.</li> </ul>	VDOE agrees that reinserting the phrase "fair and impartial hearing" in the proposed provision 8 VAC 20-81-210 L. 9. will provide clarity, and will recommend this to the BOE.  The federal regulations permit a party to appeal a due process hearing officer's decision to federal court within 90 days of the date of the hearing officer's decision. To provide consistency in process, the same timeline was proposed for the state appeal process.
	1 Att (1)	Opposes (M)(19). The provision that places the burden of proof on school divisions when a manifestation is challenged by parents exceeds federal requirements.	The federal regulations require that VDOE ensure that all noncompliances are corrected within one calendar year, including those identified via a due process hearing.
	1 Sped Adm (1)	Supports giving a hearing officer the latitude to dismiss a due process case "with prejudice" if a parent withdraws a due process case within 5 business days of the scheduled hearing. To do otherwise permits the parent access to the LEA's witness lists and documents and forces the LEA to invest considerable resources to preparing a defense, potentially harassing the LEA, or prejudicing the LEA if the parent re-files (especially if the parent withdrew their case without providing the LEA with document/witness lists, yet received the LEA's materials).	The requirement for a new resolution session following the amendment of a due process request was proposed in order to comply with federal regulations, thus ensuring that both parties have the opportunity to resolve issues after the amendment of the request.
	1 Par (1)	Opposes requiring parents to use the due process system when they disagree with the school division.	The proposed provision, which requires that hearing officer decisions be held in abeyance during appeals, is in line with customary judicial practice, and it ensures that a student's services are not unnecessarily disrupted. In accordance with

Issue	Source	Comments	VDOE Response
	3 Adv 12 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (80)	Oppose proposed deletion of language that requires that the LEA ensure that a hearing officer is appointed within 5 business days of a request for a non-expedited hearing and three business days of a request for an expedited hearing.	<p>federal regulations, the only time the hearing officer decision may not be held in abeyance is when the decision agrees with the parent's choice of placement.</p> <p>VDOE agrees that 8 VAC 20-81-210 E. should be amended to insert an "or" between provisions E. 1. a. and E. 1. b., and will recommend this change to the BOE.</p> <p>The proposed provisions regarding the sufficiency of due process hearing requests, and the amendment of those requests, are in line with IDEA and its federal implementing regulations.</p> <p>8 VAC 20-81-210 D. 1. a., as proposed, requires that if an LEA initiates a due process hearing, they must notify VDOE and the parent in writing.</p>
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose deletion of "fair and impartial hearing" in the proposed L.9. that addresses responsibilities of the LEA and requires that upon request the LEA provide information to the hearing officer to assist in the administration of a "fair and impartial" hearing.	<p>To ensure an efficient and consistent hearing process, and to avoid duplication of efforts, VDOE will recommend to the BOE that the regulations include a requirement that when an IDEA hearing also indicates a 504 dispute, that both be allowed to be included within the IDEA due process notice.</p> <p>The proposed provision allowing an LEA to initiate a due process hearing to resolve disputes regarding parental consent for the initial provision of services complies with current federal special education regulations. If USDOE amends the current federal regulations, Virginia's state special education regulations will be amended accordingly.</p>
	3 Adv 11 AO 4 Att 14 Cit 1 EO 1 LAC 1 MD 39 Par 1 PO 1 PT 1 SLP 1 Sped Tch 3 Stu (81)	Oppose the deletion of the language from the current regulations at 8 VAC 20-80-76 O.1. that permits hearing decisions to be appealed within 1 year of the date of issuance rather than 90 days. Federal regulations allow states to set their own timeline. Rationales: <ul style="list-style-type: none"> <li>• The power to make exceptions to Virginia's statute of limitations is reserved for the General Assembly.</li> <li>• Parents unfamiliar with their rights may need adequate time to bring a case, after carefully weighing the decision and information.</li> <li>• Too short of a timeline may result in more cases being appealed as parties rush to protect their rights.</li> </ul>	<p>VDOE agrees that the party requesting a due process hearing should provide a copy of the written request for due process to the other party contemporaneously with the delivery to VDOE, and will recommend this change to the Board.</p> <p>The provision permitting VDOE to require Hearing Officers to reissue decisions relative to correct use of citations, readability, and other errors, is in line with VDOE general supervisory responsibility. It is noted that neither the federal nor the state special education regulations would permit VDOE to make substantive changes. Those are issues for a court of competent jurisdiction.</p> <p>As previously noted, based on the public comments received, the Supreme Court of Virginia will continue to be responsible for the management of the due process system, including the appointment of hearing officers.</p>
	3 Adv 12 AO 4 Att 15 Cit	Oppose the proposal that allows LEAs up to a year to correct noncompliance findings. Suggests that this timeline be replaced with 45 calendar days. Rationales: <ul style="list-style-type: none"> <li>• This will prevent a denial of a timely implementation.</li> </ul>	<p>Although VDOE will continue to post its redacted due process decisions to its web site, additional regulations regarding this matter are not required.</p>

Issue	Source	Comments	VDOE Response
	1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (81)	<ul style="list-style-type: none"> <li>A delay in implementation would likely be the basis for additional compensatory education.</li> </ul>	<p>The hearing officer giving deference to witnesses for the school division is driven by case law in the 4th circuit.</p> <p>It is inappropriate for these regulations to establish mandates for the Supreme Court of Virginia.</p> <p>VDOE agrees with the comments to require that copies of the due process decisions be provided to both the parties and their attorneys. VDOE will recommend this language.</p>
	3 Adv 11 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	<p>Oppose the proposal that requires a new resolution session with an amended due process hearing since this would delay appropriate action for the child.</p>	<p>The requirement that the hearing officer "may" return the child to the placement from which the child was removed, etc..., mirrors the federal regulation.</p> <p>The word, "substantially," is included under 8 VAC 20-81-160 and in this section, referring to when LEAs request due process if the LEA believes the child's behavior is substantially likely to result in injury to self or others.</p> <p>The regulations relative to due process are based on the IDEA and its federal implementing regulations. Therefore, VDOE does not believe that further clarification regarding this subsection is required.</p>
	1 AO 1 Att 1 Par (3)	<p>Oppose requiring that hearing officer decisions be held in abeyance if the decision is appealed. Once a hearing officer has made a decision, that decision should be implemented without delay and not deny a student services while a lengthy appeal process is underway.</p>	
	1 Att 1 VDOE (2)	<p>Suggest that in 20-81-210 E., the requirement for amending a due process hearing indicate either a. or b. be met – not both.</p>	
	3 Adv 11 AO 3 Att 13 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (76)	<p>Suggest that parties only be required to go through an amendment procedure when seeking to significantly change the subject matter of the complaint, thus allowing minor insufficiencies such as leaving out the student' address or name of his/her school without going through the amendment process, particularly if the LEA's files contain this information. Parents are not knowledgeable about the hearing process, but requiring a new complaint to be filed, delays the child's ability to obtain relief.</p>	

Issue	Source	Comments	VDOE Response
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (77)	Suggest that the regulations include language that would require hearing officers to allow due process complaint notices to be amended unless doing so would prejudice the other party. Alternatively, leave to amend should be "freely given when justice so requires." Parents do not understand the hearing procedures in detail and should be allowed to amend complaints when necessary rather than having to start the entire process from the beginning with a new complaint.	
	5 AO 1 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (27)	Suggest that the regulations require the LEA to send the parent and VDOE a copy of the request for a due process hearing initiated by the LEA. By adding this language, it will ensure that the parents will receive a copy of the request for due process being filed by the LEA.	
	1 Att 2 Par (3)	Support amending 210 D. 1., to state, "1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be contemporaneously delivered by the requesting party to the other party."	
	1 Att 2 Par (3)	Support Deleting 210 D. 1. a. in its entirety, regarding the LEA "advising" the parent in writing of a request for due process.	
	1 VDOE (1)	Suggest that the regulations include a requirement that when an IDEA hearing also indicates a 504 dispute, that both be included within the IDEA due process notice to promote efficiency in the hearing process and avoid confusion about the status of the 504 dispute. This also would prevent parallel proceedings from occurring at the same time.	
	6 AO 2 Att 9 Cit	Suggest that the provision C. 2., which allows an LEA to initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to a child means that an LEA can initiate a hearing at other	

Issue	Source	Comments	VDOE Response
	28 Par 1 EO 1 LAC 1 MD 1 PO 1PT 1 SLP 1 Sped Tch 1 Stu (53)	times. Given that USDOE has indicated intent to provide guidance on this topic, suggests that this is premature.	
	2 Att 1 Cit 5 Par (8)	Oppose B.4., which permits VDOE to require that Hearing Officer's decisions be rewritten/reissued, including due to concerns about "readability" or "conflict in the data." Rationales: <ul style="list-style-type: none"> <li>• VDOE should not be permitted to make edits unless the parents' attorney may also edit.</li> </ul>	
	3 Adv 6 AO 3 Att 14 Cit 1 MD 27 Par 1 PT 1 SLP 2 Stu (58)	Support deleting from 210 B. "In administering the special education due process hearing system, the Virginia Department of Education establishes procedures for:" and replacing it with "B. If requested by the Supreme Court of Virginia, and in conformance with the provisions of the Code of Virginia, §§ 2.2-4020 and 2.2-4024 of the Administrative Process Act, the Virginia Department of Education may assist the Supreme Court with the establishment of procedures for:"	
	3 Adv 10 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 37 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (76)	Oppose deletion of language that indicates that hearing officers ensure that the rights of all parties are protected and that the laws and regulations are followed in the conduct of the hearing.	
	2 AO 1 Att 1 Cit	Oppose the proposed change to 10 days for a hearing officer to provide a written decision for an expedited due process decision. Suggests that the current 5 day timeline be used.	

Issue	Source	Comments	VDOE Response
	1 EO 9 Par 1 PO 1 SLP (16)		
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PT 1 PO 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the proposed deletion of the following from written findings: whether the requirements of the notice to the parent(s) were satisfied, whether the child has a disability, whether the child needs special education and related services, and whether the LEA is providing a free and appropriate public education.	
	3 Adv 11 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (78)	Request amending N.9. to prohibit hearing officers from granting extensions of time for school districts to respond to parents' due process complaint notices, challenge parents' due process complaints as insufficient, or unilateral school district requests to extend the 30-day resolution session period. IDEA is specific about these timelines and they cannot be changed by VDOE or the Hearing Officer.	
	1 Cit (1)	Recommends panel of 3 for a due process hearing: 1 parent, 1 mutually agreed on member, 1 VDOE selected member.	
	5 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 24 Par 1 PO 1 PT 1 SLP	Oppose deletion of language that requires a hearing officer to ensure that the atmosphere is conducive to "impartiality."	

Issue	Source	Comments	VDOE Response
	(46)		
	1 Sped Adm (1)	Supports not requiring briefs as a condition of a hearing officer rendering a decision,	
	1 Att (1)	Tighten up N.13. An expedited due process hearing is not available for a change in placement resulting from a violation of a code of student conduct. It is the result of a change in placement due to discipline as a result of a violation of the code of student conduct.	
	1 Par 1 Sped Adm (2)	Support specification of the procedures for requesting a due process hearing.	
	1 Par (1)	Opposes allowing VDOE to remove itself from being a party to a due process hearing.	
	3 Adv 2 Att 6 AO 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Support striking proposed regulation H.6., which provides that a Part C program is not stay put for children transitioning from Part C to Part B. Although H.6. is consistent with 34 C.F.R. §300.518(c), that federal regulation is not required to implement IDEA 2004, and IDEA 2004 only permits the adoption of regulations that are necessary to ensure compliance with IDEA 2004's specific requirements.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Oppose the deletion of current requirement 8 VAC 20-80-76 G. 6. that requires VDOE to notify the Virginia Supreme Court "of either the hearing officer's written decision or other conclusion of the case."	
	3 Adv 2 Att 6 AO 13 Cit 1 MD	Support amending L. 2. to clarify that parents need not use the due process complaint form provided by the LEA.	

Issue	Source	Comments	VDOE Response
	24 Par 1 PT 1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support proposed M. 17 d. providing that hearing officers may order LEAs to comply with the procedural requirements under 34 C.F.R. § 300.500 through 300.536.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Support revision of proposed regulation D.5 to clarify that the hearing officer cannot require pleading with specificity or require more information than the elements set forth in the statute.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Support amending J. to require that Virginia continue to provide hearing decisions and appeal information through regular updates to its webpage. This informs parents.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu	Support amending J.5. to provide that the names of school districts and school personnel shall not be redacted when due process decisions are posted to VDOE's web site. Identifying them is important for accountability. Parents have the right to have personally identifiable information redacted under FERPA, but LEA and personnel have no similar right. These names are not redacted in federal court because they have no valid privacy interest.	

Issue	Source	Comments	VDOE Response
	(53)		
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Support amending proposed regulation D.1. to provide explicitly that hearing notices may be filed by parents or the LEA. Further supports amending D.1.(b) to provide that parents' due process requests received only by VDOE, will be forwarded to the LEA, and clarifying that if the LEA fails to send a copy to parents, its due process request will be rejected. D.1. appears as if only LEAs may file hearing notices, and as if the provisions in D. only apply to the LEA.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Recommend change A. to indicate that parties can file due process complaints "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or provision of a free appropriate public education to such child" and 1415(f), which requires due process hearings for disciplinary matters under 1415(k).	
	1 Cit (1)	Supports proposed F.3 which permits school districts to ask the hearing officer for a 45-day extension of the interim alternative educational setting, "when school personnel believe that the child's return to the regular placement would result in injury to the student or others".	
	1 Cit (1)	Recommends correction to F.1 to add the word "substantially" thus permitting school districts to seek due process for 45-day removals only when the LEA believes the child's behavior is substantially likely to result in injury to self or others.	
	1 Cit (1)	Requests new regulations keep the standards in current (C)(4)(b) that a hearing officer is to consider ordering a change in placement to an interim alternative setting for not more than 45 school days because current placement is substantially likely to result in injury to student and others, including the appropriateness of the student's current placement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD	Recommend revision of proposed C.1 to bring it into conformity with VA's statute of limitation for civil actions, VA code § 8.01-229, providing that the statute of limitations is tolled when the person is incapacitated, and when the school district uses "any other direct or indirect means to obstruct the filing of an action."	

Issue	Source	Comments	VDOE Response
	24 Par 1 PT 1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support a revision to proposed C.1 to state that if parents file a due process complaint notice, it will toll the timeline in the event that further amendments are required. This is the standard applied in court. Otherwise, unrepresented parents may be denied the opportunity to litigate valid claims due to an inartfully drafted complaint, even when it was timely filed.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support a revision to D.6 to provide that issues not included in the due process complaint may be raised at a hearing if "the other party agrees otherwise."	
	1 Par (1)	Recommends that if a parent prevails at a due process hearing, the hearing officer should have authority to grant attorney's/advocate's fees.	
	1 Att (1)	Suggests that jurisdiction for attorneys' fees resides only with a federal court.	
	1 Att (1)	Notes that the reference to subsection G. in 8 VAC 20-81-210 R. 3. is incorrect.	
	1 Par (1)	Opposes hearing officer giving deference to witnesses for the LEA.	
	1 Att 2 Par (3)	Support amending 210 F. 1. a. to state, "The Virginia Department of Education shall contact the Supreme Court of Virginia for the appointment of the Special Education Hearing Officer."	
	1 Att	Support amending 210 F. 1. as follows: "1. Within one business days of receipt	

Issue	Source	Comments	VDOE Response
	2 Par (3)	of the request for a hearing," requiring the assignment of a HO within one day of the receipt of the request for a hearing regardless of whether or not the hearing is expedited or nonexpedited."	
	1 Att 2 Par (3)	Support amending 210 F. 1. b. to state, "The Supreme Court of Virginia shall contact the Special Education Hearing Officer to confirm availability, and upon acceptance, shall, in writing, within three business days of receipt of the request for a hearing, jointly notify the parents, the local educational agency, all attorneys of record, and the Virginia Department of Education of the appointment."	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending F.1. to require that both the LEA and the parents be informed of the HO's appointment by the State, or alternatively, to require the LEA to immediately notify the parents upon the HO's appointment. The proposed regulation would permit the LEA to delay informing the parent of who the HO is even once known to them.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending M.14. to retain the language of current 8 VAC 20-80-76 J.16., which requires that copies of the due process decision be provided to both the parties and their attorneys, or at least to the parent, as well as the parent's attorney. It is Virginia's responsibility to ensure that parents receive the decision. If the attorney does not provide the parent with the decision, the parent should not suffer the consequences.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending N.13.c.(1) to state that the hearing officer is "required to" (opposed to "may") return the child to the placement from which he/she was removed if it is determined that the removal violated special education disciplinary procedures or was a manifestation of the disability. IDEA does not permit the HO the option, when the conduct is a manifestation, to keep the child in the interim placement.	
	3 Adv 6 AO	Support amending O.2.e. to require that if the LEA fails to convene a resolution hearing as required, and parents seek intervention by a hearing officer to start the	

Issue	Source	Comments	VDOE Response
	2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	45-day due process timeline, the hearing officer must rule within three days of receipt of parents' motion. 34 C.F.R. § 300.510(b)(5) permits parents to seek the intervention of a hearing officer to start the due process timeline; however, permitting this to be delayed by a delayed briefing and motions schedule would prevent parents from achieving resolution.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Support amending proposed provision C.1. to permit parents to file actions seeking compensatory education for more that the last two years, when the conduct is ongoing. IDEA 2004's legislative history makes clear that parents can seek compensatory education for ongoing denials of FAPE to their children that have extended for longer than two years. Claims for unilateral placements when the child has not attended public school for more than two years would be time-barred.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Support clarifying that if the portion of N.5. is retained authorizing hearing officers to require that parties and their representatives "comply with the Special Education Hearing Officer's rules," then the regulations must also require that such rules be published on the VDOE's webpage, and comply with IDEA, Virginia's special education requirements, and state and federal civil procedure and evidentiary rules. To the extent they exceed Virginia special education regulations, they must be subject to notice and comment. If hearing officers are permitted to adopt individual rules, these must be published on the VDOE's webpage or automatically provided to parties upon filing a case and being assigned a judge, just as with a federal court judge's standing orders.	
	1 Att  (1)	Supports combining 210 R. 3. and 4. into one provision that states, "The Special Education Hearing Officer's decision shall be implemented as soon as reasonably possible, but in no case longer than 30 calendar days from the date the decision was issued. If not implemented within 30 days, the VDOE is immediately responsible for implementing the Hearing Officer's decision." This timeline would align with the required timeframe for implementing an IEP, and if the LEA decides to appeal, they can request an injunction to postpone implementation.	
	1 Att 2 Par  (3)	Support deleting 210 F. 1. c. in its entirety.	
	3 Adv 6 AO 2 Att 13 Cit	Support implementation of M.19, specifying the hearing officer's obligations when a manifestation determination is at issue.	

Issue	Source	Comments	VDOE Response
	1 MD 24 Par 1 PT 1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementation of proposed regulation M.15, requiring hearing decisions to include the findings of fact determinative of the case, the legal principles on which the decision is based, and an explanation for the basis of decision on each issue, and permitting an explanation of relief granted.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support proposed provision C.1., which ensures that there is a two year timeline for filing due process requests, and provides two exceptions.	
	1 Par (1)	Supports requiring due process hearings to be held on neutral territory.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support retaining proposed regulation I. in full.	
	3 Adv 6 AO 2 Att	Support striking the proposed language in N. 10. that permits the dismissal of due process cases if "either party" refuses to comply in good faith with a hearing officer's order. Alternatively, supports providing that hearing officers have	

Issue	Source	Comments	VDOE Response
	13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	authority to dismiss cases when there is compelling evidence of bad faith by the party that filed for due process, and authority to enter default judgments and strike affirmative defenses when there is compelling evidence of bad faith by the recipient of due process (defendant). IDEA 2004 does not permit a HO to dismiss a parent's case because a defendant school district wrongfully ignores a HO's order; however, the proposed language would allow that. Because all of these remedies (dismissal, default judgments, and striking of defenses) are so severe, there must be compelling evidence of actual bad faith before they may be ordered.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Support the inclusion of H.1. to H. 5. as consistent with federal and state law.	
	2 Par  (2)	Support VDOE providing parents the same access to the electronic IDELR library during due process hearings as is provided to hearing officers and LEAs.	
	1 Att  (1)	Opposes the language of R.4. to the extent that it appears as if VDOE assumes no responsibility for ensuring that due process hearing decisions are enforced. (The provision notes a complaint may be filed with VDOE for investigation if a decision is not implemented.)	
	1 Par  (1)	Opposes permitting LEAs to use other children's educational records, state complaints, and/or due process hearing decisions as part of its due process defense.	
	1 Par  (1)	Opposes proposed change which prevents a foster parent or social worker from requesting due process on a child's behalf.	
	3 Cit 2 Par 1 Sped Tch  (6)	Generally oppose the changes in the due process section, and supports maintaining existing provisions.	
	1 Par  (1)	Supports requiring that the parent and the LEA be informed of the identity of the hearing officer appointed for their hearing.	

Issue	Source	Comments	VDOE Response
<p><b>Due Process – Resolution Sessions</b></p> <p>8 VAC 20-81-210 O. 1. - O.5., and P. 2.</p> <p>(526 comments)</p>	<p>1 AO (1)</p>	<p>Suggests that the proposed regulations do not include enough safeguards to ensure that parents are on an equal and respectful playing field during these meetings.</p>	<p>VDOE agrees that the regulations should clarify in accordance with 34 C.F.R. § 300.510, that efforts to arrange a resolution meeting must be documented in accordance with 8 VAC 20-81-110 E.4., and will recommend this change to the Board.</p> <p>The remaining proposed provisions are consistent with the federal regulations regarding resolution sessions. Therefore, VDOE does not believe that additional clarification is necessary, including regarding the requirement to use state or federal courts to enforce agreements reached during resolution sessions. Specifically, while States have the option of allowing resolution agreements and mediation agreements to be enforced through other mechanisms, it is not feasible for VDOE to assume this responsibility due to the specific nature of contract law that is presumed.</p> <p>VDOE does support the scheduling of resolution sessions at a mutually agreed upon time and place, to the extent that the timelines for convening such sessions are met.</p>
	<p>3 Adv 13 AO 2 Att 23 Cit 1 LAC 1 MD 50 Par 1 PO 2 PT 2 SLP 3 Stu (101)</p>	<p>Oppose proposed language that indicates that a resolution session is not required if the LEA requests the due process hearing. Support amending O.9. to require that resolution sessions be mandatory regardless of who requests due process, including 15 days to convene a meeting and 30 days to reach a resolution.</p>	
	<p>3 Adv 4 AO 3 Att 1 Cit 1 EO 1 LAC 31 Par 1 Psy 1 Sped Tch 2 Stu (48)</p>	<p>Support the requirement that a resolution session be held, unless both parties agree otherwise, regardless of whether the due process is filed by the parent or the LEA.</p>	
	<p>1 AO 1 Att 1 Par (3)</p>	<p>Suggest adding language requiring resolution sessions to be confidential, helping to ensure open and honest discussion and a greater likelihood that settlement could occur.</p>	
	<p>1 Att (1)</p>	<p>Opposes the imbalance between the rights of the parent and the rights of the LEA in resolution sessions.</p>	
<p>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT</p>	<p>Support amending O.1.a. to require that LEAs make all reasonable efforts to schedule the resolution session at a mutually-agreed upon time and place, and contact the parent within five days of receiving the due process hearing request to schedule the meeting. LEAs could dismiss cases by scheduling sessions when parents cannot attend. If the resolution meetings are to decrease litigation, parents must be able to attend the meeting.</p>		

Issue	Source	Comments	VDOE Response
	1 SLP 2 Stu (53)		
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Request revision of O. 2. so that if parents are unable to attend a resolution session, the school district should use alternative means to ensure participation, such as those described in Sec. 300.328, including conference calls or videoconferencing, subject to the parent's agreement.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 1 Stu (52)	Support amending O.1.a. to specifically recognize the rights of parents to bring advocates and others with special knowledge of the child to the resolution meeting.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending O.1.a. to prevent LEAs from abusing/misusing the resolution session, and from preventing parents from seeking due process when they have attended a resolution session. The resolution session should not be an opportunity for the LEA to impose additional obligations on parents or to intimidate or interrogate parents, used as a one way discovery session, or grounds for dismissing the hearing based on the parent's denial of an LEA offer.	
	3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)	Support amending O.1.d. to require the LEA to consult parents to select relevant team members within five days of the receipt of the due process hearing request. To ensure a resolution is achieved, IEP members whom the parent believes need to attend must be included. The LEA must consult parents sufficiently in advance of the meeting to ensure that parents have meaningful input and that arrangements can be made to ensure that the team members attend.	

Issue	Source	Comments	VDOE Response
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Request adding a new section to the regulations allowing a signed resolution agreement to be enforced through the Complaint Procedures under 8 VAC 20-80-78, as well as in state or federal court. The complaint process is simpler and less expensive than seeking enforcement via the courts.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support amending O.2.d., in accordance with 34 C.F.R. § 300.510, to provide that efforts to arrange a resolution meeting must be documented in accordance with 34 C.F.R.300.322(d) or 8 VAC 20-81 E.4. before the school district may request dismissal.	
	1 LEA (1)	Supports the proposed regulation that requires school divisions to convene a resolution meeting within 15 days when a parent files a due process hearing request.	
<b>Due Process - Lay Advocates</b>  8 VAC 20-81-210  (2 comments)	2 Sped Adm (2)	Oppose non-attorney representation of parties. Supports access to attorney representation of parties, at their expense, in a due process hearing due to the complexity of cases that require a hearing.	It is not feasible to adopt the commenter's recommendation since the <i>Code of Virginia</i> allows for non-attorney representation at a hearing.
<b>Surrogate Parents</b>  8 VAC 20-81-220  (410 comments)	1 Gen Ed (1)	Suggests that the regulations specify what assistance (courts, agencies) the LEA may have in finding and assigning surrogate parents.	It is anticipated that these regulations will require many fewer instances for assigning surrogate parents and do not specify the procedures for recruiting surrogate parents at the local level. Should an LEA have difficulty, as part of VDOE's ongoing responsibility to provide technical assistance, the VDOE will provide ideas and referrals to other agencies for assistance.  The proposed language at 8 VAC 20-81-220 B. 2. and D.3. is consistent with the federal regulations. VDOE, therefore, does not believe further clarification is necessary.
	1 Sped Adm (1)	Supports these regulations which are in line with the federal regulations.	
	1 Sped Adm (1)	Supports the proposed removal of the requirement that a surrogate parent reside in the same general geographic area as the child since it may make it easier for divisions to find individuals willing to serve as surrogate parents.	

Issue	Source	Comments	VDOE Response
	3 Adv 11 AO 3 Att 14 Cit 1 EO 1 LAC 1 MD 38 Par 1 PO 1 PT 1 SLP 1 Sped Tch 2 Stu (78)	Suggest that the proposed regulation which allows for termination of a surrogate parent when a child is found no longer eligible for special education also require the consent for termination by the surrogate parent.	<p>The proposal for not requiring a surrogate to reside in the same geographic area was based on the need to recruit those willing and capable of serving in this capacity which may necessitate going beyond local boundaries.</p> <p>In response to the public comments regarding parent consent and the termination of special education and related services, VDOE will recommend to the BOE to retain the current requirement regarding the surrogate parents' consent in this instance.</p> <p>The definition of parent in the proposed regulations takes into consideration both federal and state regulations.</p>
	1 AO 1 Par (2)	Suggest changing the situations that would require a surrogate parent, thus requiring LEAs to appoint surrogates only when the suggested provisions of B.1. do not apply.	VDOE will recommend to the BOE that the suggested language related to establishing procedures in accordance with these regulations will be inserted to ensure clarity.
	1 AO 1 Par (2)	Suggest changing language in B.1. to reflect changes to the definition of parent in the federal regulations, thus minimizing the need for the use of surrogate parents. This change would also clarify when surrogate parents are needed.	Many surrogate parents are already parents of students with disabilities or have been involved in services for students with disabilities. VDOE heard that the training was both a barrier to recruitment as well as redundant for those serving. Consequently, this was removed to facilitate timely recruitment.
	3 Adv 7 AO 3 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (56)	Suggest added language that would specify that LEAs must establish procedures "in accordance with these regulations" for determining when a child needs a surrogate parent.	<p>Language is included at B.1.b. to ensure that other requirements related to who may act as a parent in VA is included. Consequently, the suggested language at B.1.b. is not appropriate.</p> <p>Language related to children in social services and permanent foster case is included since that falls under specific requirements of the Code of Virginia. As such, it cannot be excluded.</p> <p>VDOE agrees with the comments related to the need for clarity regarding the appointment of a surrogate parent for children who are wards of the state or homeless and will recommend clarifying language to the BOE.</p>
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Stu 1 Sped Tch (53)	Oppose the proposed deletion of current requirements for surrogate parents to complete an LEA approved training session with annual training as necessary to ensure that surrogate parents have the necessary knowledge of services and legal requirements necessary to represent the student.	

Issue	Source	Comments	VDOE Response
	1 AO (1)	Recommends revising 8 VAC 20-81-220 B. 2. to state, "The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, including a child who is a ward of the state or an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC § 1143a(6)) and the Code of Virginia § 22.1-3, who is suspected of having or determined to have a disability when: a. No parent, as defined in 8 VAC 20-81-10, can be identified; or The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent." This change will ensure that a surrogate is not appointed for a homeless youth or ward of the state if someone meeting the definition of parent is available.	
	1 AO (1)	Supports language in B.5 which provides that the local educational agency shall establish procedures for determining whether a child needs a surrogate parent.	
	1 AO (1)	Supports the narrower wording in D.3. allowing the use of appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be a temporary surrogate parent even though they may be an employee of an agency involved in the education and care of the child. The broader language of the federal regulations would allow state or local educational agency staff to serve as temporary surrogates which would not be appropriate.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest amending B.1.b. by replacing the entire proposed provision with the following language, " Any person who can serve as 'parent,' as defined by this chapter in 8 VAC 20-80-10, other than a surrogate parent, is either acting as a parent, or is available and willing to act as parent for the purposes of this chapter."	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Suggest deleting B.1.c. which relates to those children in the custody of social services.	
	3 Adv 6 AO	Suggest amending B.1.a. to insert "adoptive," thus "a. The biological, adoptive parent(s) or guardians are allowing relatives or private individuals to act as a	

Issue	Source	Comments	VDOE Response
	2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	parent.”	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)	Suggest adding the following language to the end of B.2.c. “The child is a ward of the state and the provisions of 8 VAC 20-81-220(B)(1) do not apply.”	
<b>Annual Plan</b> 8 VAC 20-81-230 B (115 comments)	1 LAC 3 Par 1 SLP (5)	Support requiring LEAs to provide an opportunity for notice and comment on local policies and procedures so parents can express their concerns, if the LEA will have more power/autonomy.	Nothing in the proposed regulations would prohibit a school division from providing notice and soliciting comments on local policies and procedures. Local advisory committees are required to participate in the review of policies and procedures for the provision of special education and related services. Notice of their meetings to the public is required. The public is invited to make public comment to members of local advisory committees.  LEAs are responsible for developing local policies and procedures in compliance with state regulations. As with other local regulations, they are not subject to approval by VDOE.
	6 Adv 12 AO 4 Att 26 Cit 2 MD 52 Par 2 PT 2 SLP 4 Stu (110)	Support retaining current requirement which requires LEAs to prepare and submit to VDOE policies and procedures as well as any changes to those after submitting them to their local school boards for approval. Without such oversight, VDOE will be less aware if LEAs incorrectly craft procedural changes.	
<b>Funding - General (except Early Intervening Services)</b> 8 VAC 20-81-230 C. 8 VAC 20-81-240 to 8 VAC 20-81-290 (161 comments)	1 Sped Adm (1)	Suggests that at least two years notice be provided to LEAs for any changes to regional special education tuition structure and reimbursement. The use of the phrase, “subject to availability” and no reference to the use of the composite index is a concern. Local budgets would need to accommodate changes and LEAs would need to be able to anticipate possible cost increases as well as adjustments resulting from the deletion in the proposed regulations of appeal rights related to the rate for regional special education programs.	The proposed revision related to regional special education programs provides the Superintendent of Public Instruction or designee greater flexibility in the structuring of programs and funding to meet the needs for students in regional programs.  Funding allocations are not specified in these regulations and are determined by state Standards of Quality funding formulae and federal funding formulae.
	1 Par	Opposes budget cuts in preschool special education programs since early	

Issue	Source	Comments	VDOE Response
	(1)	intervention is necessary for success.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementing 20-81-250, State funds for local school divisions, as proposed.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support implementing 20-81-260, Federal funds, as proposed.	
	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)	Support 20-81-280 C. and G. as proposed which allows for the state to withhold funds if it finds that an LEA fails to implement programs of FAPE and for the LEA to provide public notice of such action.	
<b>Local Advisory Committees (LAC)</b>  8 VAC 20-81-230 D.  (2,859 comments)	3 LEA Gen 2 PO 1 PRC 12 Prin 36 Sped Adm 16 Sped Tch 1 Sup 1 SW (72)	Support a balanced representation of parents of children with varied disabilities.	Due to the long-standing requirement for local advisory committees and a history of their contributions, the Board of Education maintained the requirement for local advisory committees in its proposed regulations. To comply with federal mandates and to address comments raised during NOIRA public comments, however, the committee composition was modified to: <ul style="list-style-type: none"> <li>• require membership diversity to reflect local gender and ethnicity representation. Such representation is designed to ensure that cultural and gender-specific concerns are addressed by the committees;</li> <li>• require that a majority of the committee be parents of</li> </ul>
	16 Adv	Oppose allowing LEA personnel to act as voting members on LACs due to a	

Issue	Source	Comments	VDOE Response
	27 AO 6 Att 2 Brd 632 Cit 1 EO 2 Int 3 LAC 1 LEA Gen 1 MD 248 Par 1 OT 1 Psy 2 PT 4 PTA 3 SLP 3 Sped Tch 7 Stu (960)	conflict of interest.	<p>students with disabilities <u>or</u> individuals with disabilities. The current regulations require that the committee include parents of students with disabilities <u>and</u> individuals with disabilities. The requirement for parents to be the majority ensures that family concerns are the focus of the committee.</p> <ul style="list-style-type: none"> <li>allow LEA personnel to serve as members of the committee. A number of comments were received during NOIRA indicating that parents of students with disabilities who were also school employees were prohibited from participating. Since some LEAs have difficulty recruiting active members, the prohibition was removed to give LEAs more flexibility in recruiting parents of students with disabilities.</li> </ul> <p>VDOE does not believe that further specificity regarding these requirements is warranted. However, VDOE will recommend to the BOE removal of the requirement regarding membership diversity reflecting local gender and ethnicity representation.</p>
	1 LAC 1 LEA 4 LEA Gen 1 Par 2 PO 1 PRC 12 Prin 33 Sped Adm 20 Sped Tch 2 Sup 1 SW (78)	Support membership and voting rights for school personnel. 1 Sup indicated the restriction could be discriminatory.	Additionally, VDOE will recommend language wherein the LAC composition will include a teacher.
	1 AO 1 Gen ed 2 LEA Gen 1 Par 1 PO 1 SLP 3 Sped Tch (10)	Suggest that at least one special education classroom teacher be a voting member of the LAC.	
	1 Sped Adm (1)	Supports the changes proposed to allow LEA representatives on the committee as well as the requirement that the majority be parents.	
	9 Adv 12 AO 1 Att 602 Cit	Oppose requiring LACs to be representative of gender due to the high number of women in advocacy roles and who take responsibility for their children's education, and because women make up the majority of educational professionals and serve as volunteers of PTAs.	

Issue	Source	Comments	VDOE Response
	2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 132 Par 1 PO 2 PT 3 PTA 3 SLP 2 Sped Adm 2 Sped Tch 1 SSEAC 2 Stu 2 Sup (780)		
	9 Adv 14 AO 1 Att 600 Cit 2 Int 1 LAC 1 LEA Gen 1 MD 1 OT 138 Par 1 PO 2 PT 3 PTA 3 SLP 2 Sped Adm 2 Sped Tch 1 SSEAC 2 Stu 2 Sup (786)	Oppose ethnic representation on LACs due to an inability of a local LAC to be proportionally representative of every ethnic group in a locality and would result in a very large committee.	
	6 Adv 10 AO 4 Att 33 Cit 1 EO 1 LAC 1 MD 83 Par 1 Psy 1 PT 1 Sped Tch 4 Stu	Support the continued requirement of Local Advisory Committees.	

Issue	Source	Comments	VDOE Response
	(146)		
	1 Par (1)	Suggests that the language be changed from “shall” to “the best of the LEA’s ability” regarding committee composition or leave the regulations as is.	
	1 EO (1)	Suggests that the regulations indicate that LACs not be allowed to meet in closed session.	
	1 Sped Adm (1)	Suggests clarifications and modifications of roles of the LAC.	
	1 AO 4 Cit 15 Par 1 SSEAC 1 Stu (22)	Support maintaining current provisions related to LACs.	
	1 Sup (1)	Suggests that the requirement for LACs be dropped due to difficulties with attendance.	
<b>Infant and Toddler Transition/ Part C to Part B (except IEP meeting notice and composition)</b>  8 VAC 20-81-230 G.  (53 comments)	3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)	Support the proposed provisions regarding transition in the IEP (specifically regarding additional notice requirements and regarding IEP content.) These changes will facilitate smoother and more effective transition efforts for Part C.	The proposed provisions are consistent with IDEA and federal regulations.
<b>National Instructional Materials Accessibility Center (NIMAC)/ National Accessibility Materials Accessibility Standard (NIMAS)</b>  8 VAC 20-81-230 K.  (118 comments)	1 Gen Ed  (1)	Supports the need to provide students with disabilities access to instructional materials in accessible formats and suggests that teachers have access to teacher’s editions and necessary supplies such as graphing calculators.	Consistent with the federal regulations, Virginia is implementing a system to assist LEAs to provide instructional materials in accessible formats in a timely manner. As the system is developed, further direction and technical assistance will be provided to LEAs.  Materials provided to teachers are the responsibility of the LEA. These regulations require accessible materials for students which include the services required for them to be accessible. This may necessitate materials for teachers.  Student eligibility for NIMAS/NIMAC is the result of copyright
	2 AO 1 LEA Gen 1 Par 1 PO 1 SLP 3 Sped Tch  (9)	Suggest that school boards ensure that students with disabilities have access to instructional materials in accessible formats and that teachers also have access to teacher editions and necessary supplies and equipment associated with this item.	

Issue	Source	Comments	VDOE Response
	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)	Oppose the definitions used for those who are eligible for NIMAC/NIMAS services and suggests that VDOE not be in the business of medically diagnosing disabilities.	laws and federal regulations.
	3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)	Suggest inserting a new provision to state, "The local educational agency shall adopt a guidance document outlining the reasonable steps the local education agency will take to facilitate providing instructional materials in accessible formats in a timely manner. The adopted guidance shall also give consideration to availability of supporting assistive technology, supplemental books and materials, advance availability of teacher syllabuses, and availability of trained personnel to proof non-NIMAS documents prior to student receipt."	
<b>State Operated Programs Educational Responsibility</b>  8 VAC 20-81-320  (53 comments)	6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 27 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (52)	Oppose the proposed elimination of language that requires a comprehensive system of personnel development to include training of general and special education instructional personnel, support personnel, and paraprofessionals.	
	1 MD (1)	Suggests that spending on special education needs to be monitored closely since autism spectrum disorder diagnoses is on the rise but not necessarily in true prevalence. This could impact funding targets and suggests the need to be fiscally responsible especially during a recession.	

Issue	Source	Comments	VDOE Response
<p><b>Section 504</b> 8 VAC 20-81-330 (53 comments)</p>	<p>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (53)</p>	<p>Support implementing the Section 504 section as proposed which allows localities to use the state hearing officer system at their own expense.</p>	<p>Because IDEA encompasses requirements from Section 504, the hearing officers are trained in the requirements of Section 504. It is, therefore, appropriate for LEAs to use the hearing officer system to resolve disputes on Section 504 requirements.</p>

**REGULATIONS GOVERNING  
SPECIAL EDUCATION  
PROGRAMS FOR CHILDREN  
WITH DISABILITIES  
IN VIRGINIA**

**(Mark-up Version)**

**EFFECTIVE**

## FOREWORD

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

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

- 1) Ensure that any State rules, regulations, and policies relating to the IDEA '04 conform to the requirements of the federal statute and regulations;
- 2) Identify in writing to local educational agencies located in the State and the Secretary of Education any such rule, regulation, or policy as a State-imposed requirement that is not required by the federal statute and regulations; and
- 3) Minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under the federal statute and regulations.

This federal regulation also requires that State rules, regulations, and policies under the IDEA '04 shall support and facilitate [~~LEA~~local educational agency] and school-level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards.

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

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

Copies of these regulations, including Braille copies, audio tapes, and large print versions are available at no cost from the Virginia Department of Education. Please forward your request to the Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23218-2120, or by calling 1-800-~~29229~~-3820. Copies of these regulations are also available on the Virginia Department of Education's Web site at: [www.doe.virginia.gov/VDOE/duproc](http://www.doe.virginia.gov/VDOE/duproc)

## PREAMBLE

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

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

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

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

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

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

In addition to these requirements, the following statutes and regulations are applicable to children with disabilities: all regulations promulgated by the Board of Education, provisions of the *Code of Virginia* (COV), the requirements of section 504 of the Rehabilitation Act of 1973 (as amended), the Americans with Disabilities Act, the Education Department General

Administrative Rules (for federal grant requirements), the Virginians with Disabilities Act, and the No Child Left Behind Act of 2001.

[These requirements are based on the fundamental notion that special education and related services are to be designed to meet the unique educational needs of children with disabilities, provide educational opportunity on the general curriculum to the extent possible in accordance with each child's individualized education program, and prepare children with disabilities for opportunities in post-secondary education, employment, and independent living.]

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## Part I Definitions

### **8VAC20-81-10. Definitions.**

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

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, §1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent(s) of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§1-204 of the Code of Virginia; 34 CFR 300.520)

"Agree or Agreement" – see the definition for "consent." "Alternate assessment" means the state assessment program, [and any school division-wide assessment to the extent that the school division has one,] for measuring student performance against alternate achievement standards for students with significant [~~cognitive~~ intellectual] disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

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

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

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

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent(s) as part of the regular education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

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

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

characteristics of autism after age three could be [~~diagnosed~~ identified] as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

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

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC §2301 et seq.)

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

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

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

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;
2. The expulsion or long-term removal of a student with a disability;
3. The placement change that results from a change in the identification of a disability;

4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;
5. Termination of all special education and related services; or
6. Graduation with a standard or advanced studies high school diploma.

[A "change in placement" also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.]

"Change in placement" or "change of placement," for the purposes of discipline, means: (34 CFR 300.536)

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

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§22.1-212.5 [~~and through~~] 22.1-212.[~~45~~16] of the Code of Virginia; 34 CFR 300.7)

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

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having [~~mental retardation~~ an intellectual disability], a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional [~~disturbance~~ disability] (referred to in this part as "emotional [~~disturbance~~ disability]"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. [This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M.3.] If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to

be a child with a disability. (§22.1-213 of the Code of Virginia; 34 CFR 300.8 (a)(1) and 34 CFR 300.8(a)(2)(i) and (ii)

~~["Cognitive disability" – see "Mental retardation."]~~

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

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent(s) of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system ~~[that addresses and funds for]~~ services for certain at-risk youths and their families. (Chapter 52 (§2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s') or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

"Controlled substance" means a drug or other substance identified under schedules I, II, or III, IV, or V in §202(c) of the Controlled Substances Act, 21 USC §812(c). (34 CFR 300.530(i)(1)~~(e)~~)

"Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR 300.10)

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§16.1-228 and 53.1-1 of the Code of Virginia)

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

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22)

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than  $2\frac{1}{2}$  3 inches in length. (18 USC §930(g)(2); [COV §18.2-308.1])

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through five inclusive: (34 CFR 300.8(b); [ 34 CFR 300.306(b)])

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;
2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent(s) and a local educational agency. A due process hearing involves the appointment of an impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR 300.507~~(a)~~)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC §1232g(a)(3); §22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;
2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;
3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
4. Entities that meet the definition of intermediate educational unit in §1402(23) of the Act as in effect prior to June 4, 1997.

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

"Emotional [~~disturbance~~disability]" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

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

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

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting (34 CFR 300.16)

1. Amounts received:
  - a. Under Part B of the Act;
  - b. Under Part A of Title I of the ESEA; and
  - c. Under Parts A and B of Title III of the ESEA and;
2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

1. Are provided to a child with a disability:
  - a. Beyond the normal school year of the local educational agency;
  - b. In accordance with the child's individualized education program;
  - c. At no cost to the parent(s) of the child; and
2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC §7801(11))

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

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

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may [be include] a review of existing data [or new testing data or evaluation as determined by the IEP team].

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

"Highly qualified special education teacher" means a teacher has met the requirements as specified in 34 CFR 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for

special education teachers teaching multiple subjects as it applies to their teaching assignment. (34 CFR 300.18)

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

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a parent(s), guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in §725 (42 USC §11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC §11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of §103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.
2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of §103(a)(2)(C);
3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory children (as such term is defined in §1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

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

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the

division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC §812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

"Impartial special education hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.]

"Implementation plan" means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.]

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502 (a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family. ( 34 CFR 303.24; [20 USC §636])

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (~~§22.1-213~~ 2.2-5300 of the Code of Virginia; 34 CFR 300.25)

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

"Informed parental consent": see "Consent."

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

"Intellectual disability" [~~see~~ means the definition formerly known as "Mental/mental] retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6)]

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued [speech/]language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell[ and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program.] (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

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

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

"Limited English proficient" when used with respect to an individual means an individual: (20 USC §7801(25); 34 CFR 300.27)

1. Who is aged 2 through 21;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or
3. Who:
  - a. Was not born in the United States or whose native language is a language other than English;

- b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
  - c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
- a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;
  - b. The ability to successfully achieve in classrooms where the language of instruction is English; or
  - c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (the Virginia schools)~~]. Neither state-operated programs nor the Virginia [~~schools~~ School for the Deaf and Blind at Staunton] are considered a school division as that term is used in these regulations. (§22.1-346 C of the Code of Virginia; 34 CFR 300.28)

["Long-term placement" if used in reference to state-operated programs as outlined in 8VAC20-81-30 H. means those hospital placements which are not expected to change in status or condition because of the child's medical needs.]

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

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" – [~~means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))~~]see "Intellectual Disability."

"Multiple disabilities" means simultaneous impairments (such as [~~mental retardation~~ intellectual disability with] blindness, [~~mental retardation~~ intellectual disability with-] orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: [~~(20 USC §1474(e)(1) and (e)(2))~~ 34 CFR300.172]

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

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard [established by the United States Secretary of Education] to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. [ ~~(20 USC §1474(e)(3)(B))~~ 34 CFR 300.172 ]

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent(s) of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the parent(s), or, if the language or other mode of communication of the parent(s) is not a written language, oral communication in the primary language of the home of the parent(s). If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

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

"Orthopedic impairment" means a severe orthopedic impairment [that adversely affects a child's educational performance]. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome [that adversely affects a child's educational performance]. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§20-124.6 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":
  - a. A biological or adoptive parent of a child,
  - b. A foster parent:
    - (1) If the biological parent(s)' authority to make educational decisions on the child's behalf has been extinguished under §16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia or a comparable law in another state;
    - (2) The child is in permanent foster care pursuant to Chapter 9 (§63.2-900 et seq.) of Title 63.2 of the Code of Virginia or comparable law in another state; and

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

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

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

e. A surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220.

[f. A minor who is emancipated under §16.1-333 of the Code of Virginia.]

2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person(s) shall be determined to be the "parent" for purposes of this definition.

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

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

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

6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.

[7. A validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record, and thus, assume responsibilities of "parent" under this chapter.]

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or

institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

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

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

"Private school children with disabilities" means children with disabilities enrolled by their parent(s) in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
6. Assisting in developing positive behavioral intervention strategies.

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent(s). (34 CFR 300.502(a)(3)(ii))

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

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC §701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

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

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC §701 et seq.), as amended. (34 CFR 300.34(c)(12))

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

device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

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

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that: (20 USC §9501(18); 34 CFR 300.35)

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

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

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC §701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. (18 USC §1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the [LEA-local educational agency] will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660); 34 CFR 300.34(c)(14))

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

[A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.]

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

following if it meets the requirements of the definition of special education: (§22.1-213 of the Code of Virginia; 34 CFR 300.39)

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

"Special education hearing officer" has the same meaning as the term "impartial hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

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

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of ~~[mental retardation-intellectual disabilities]~~; ~~[of emotional disabilities]~~; of environmental, cultural, or economic disadvantage. (§22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

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

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;

2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

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

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. [(34 CFR 300.172(b)(4))]

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

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

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education,

vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

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

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, [that adversely affects a child's educational performance]. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

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

"Universal design" has the meaning given the term in §3 of the Assistive Technology Act of 1998, as amended, 29 USC §3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton~~[and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton]~~ or "Virginia schools"] means the Virginia ~~[schools]~~school under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of ~~[the Virginia schools]~~this school. (§22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

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

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

"Weapon" means dangerous weapon under 18 USC §930(g)(2). (34 CFR 530(i)(4))

## Part II Responsibilities of the State Department of Education

### ***8VAC20-81-20. Functions of the Virginia Department of Education.***

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

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to, children with disabilities who: (34 CFR 300.2 and 34 CFR 300.101)
  - a. Are migrant;
  - b. Are homeless;
  - c. Have been suspended or expelled from school, in accordance with this chapter;
  - d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8VAC20-81-110 I;
  - e. Are ~~in~~ receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;
  - f. Are in state-operated programs; or
  - g. Are in public charter schools in accordance with the Code of Virginia.
2. Except as provided in ~~[8VAC20-81-80 F8VAC20-81-170 E.4.b.(3)]~~, ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team. (34 CFR 300.112 [ and 34 CFR 300.300(b)(4)(ii) ] )
3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities. (§22.1-215 of the Code of Virginia; 34 CFR 300.200)
4. Ensure that each local educational agency includes all children with disabilities in all general Virginia Department of Education and division-wide assessment programs, including assessments described in §1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at §1412. (20 USC §1412(a)(16)(A))
5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the areas served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education. (34 CFR 300.110)

6. Ensure that each educational program for children with disabilities administered within Virginia: (34 CFR 300.149(a))

- a. Is under the general supervision of the persons responsible for educational programs for children with disabilities in Virginia; and
- b. Meets the educational standards of the Virginia Department of Education.

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

7. ~~[Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools, and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met. Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools.]~~ (34 CFR 300.165)

8. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities. (§22.1-214 of the Code of Virginia; 34 CFR 300.199 and 34 CFR 300.129)

9. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to LRE requirements by: (34 CFR 300.119)

- a. Ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements; and
- b. Providing them with technical assistance and training necessary to assist them in this effort.

10. Ensure that the requirements for LRE are implemented by each local educational agency. If there is evidence that a local educational agency's placements are inconsistent with LRE requirements, the Virginia Department of Education shall: (34 CFR 300.120)

- a. Review the local educational agency's justification for its actions; and
- b. Assist in planning and implementing any necessary corrective action.

11. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed. (34 CFR 300.149, 34 CFR 300.151 and 34 CFR 300.507)

- a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers,~~[processing requests for a hearing, appointment of~~ evaluating

special education hearing officers, [and] management and monitoring of hearings~~[, and administration of the hearing system]~~.

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

12. Establish and implement a mediation process in accordance with the Act. (§22.1-214 of the Code of Virginia; 34 CFR 300.506)

13. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure that each child with a disability placed in the school by a local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.129, 34 CFR 300.146 and 34 CFR 300.147)

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

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

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

14. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton ~~[and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton]~~ to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.149)

15. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. (34 CFR 300.167 through 34 CFR 300.169)

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

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

(2) Individuals with disabilities;

(3) Teachers;

- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Act (42 USC §11431 et seq);
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools and public charter schools;
- (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (10) A representative from Virginia's juvenile and adult corrections agencies; and
- (11) A representative from Virginia's child welfare agency responsible for foster care.

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

- (1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;
- (2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;
- (3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Act;
- (4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;
- (5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and
- (6) Review the annual plan submitted in accordance with 8VAC20-81-230 B 2 submitted by state-operated programs[ and] the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~].

c. Procedures.

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

- (3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.
  - (4) All meetings and agenda items shall be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings shall be open to the public.
  - (5) Interpreters and other necessary accommodations shall be provided for advisory committee members or participants.
  - (6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.
16. Provide a report annually to the state special education advisory committee on the Virginia Department of Education's dispute resolution systems, including information related to due process hearings and decisions. This report and due process hearing decisions, with all personally identifiable information deleted, are made available to the public on the Virginia Department of Education's website. (34 CFR 300.513(d))
17. Establish goals for the performance of children with disabilities that: (34 CFR 300.157(a))
- a. Promote the purposes of the Act;
  - b. Are the same as Virginia's objectives for progress by children in its definition of adequate yearly progress, including Virginia's objectives for progress by children with disabilities, under §1111(b)(2)(C) of the ESEA, 20 USC §6311;
  - c. Address graduation rates and drop out rates, as well as such other factors as Virginia may determine; and
  - d. Are consistent, to the maximum extent appropriate, with any other goals and academic standards for children as established by Virginia.
18. Establish performance indicators Virginia will use to assess progress toward achieving the goals in subdivision 17 of this section, including measurable annual objectives for progress by children with disabilities under §1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC §6311. Annually report to the public and the United States Secretary of Education on the progress of children with disabilities in Virginia, toward meeting the goals described in subdivision 17 of this section, which may include elements of the reports required under §1111(h) of the ESEA. (34 CFR 300.157(b) and (c))
19. Establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. These requirements include: (34 CFR 300.156(a) through (d))
- a. Related services personnel and paraprofessionals. The qualifications shall:

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

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

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

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

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

20. Respond to complaints filed by a parent about staff qualifications as provided for under this chapter. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or local educational agency employee to be highly qualified. (34 CFR 300.156(e))

21. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic educational agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings. (34 CFR 300.154)

22. Disburse the appropriated funds for the education of children with disabilities in Virginia to local school divisions and state-operated programs that are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities. (34 CFR 300.705 and 34 CFR 300.816)

23. Ensure that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving

needed special education and related services. Report and certify annually to the United States Department of Education the number of children with disabilities in local educational agencies who are receiving special education and related services on [any-a] date between October 1 and December 1 of each year [determined by the Superintendent of Public Instruction or designee]. The annual report of children served shall meet the provisions of 34 CFR 300.641 through 34 CFR 645. (34 CFR 300.111 and 34 CFR 300.640)

24. Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in the local educational agencies. This method shall include the collection and examination of data with respect to: (34 CFR 300.646(a) and 34 CFR 300.173)

- a. The identification of children as children with disabilities, including the identification of [children as children with disabilities in accordance with ]a particular impairment described in 8VAC20-81-10, "Child with a disability";
- b. The placement in particular educational settings of these children; and
- c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

25. Ensure that in the [case of the ] determination of significant disproportionality, [as outlined in subdivision 24 of this section], the Virginia Department of Education [shall]: (34 CFR 300.646(b))

- a. [Reviews review ] and, if appropriate, [revises-provide for the revision of ] the policies, procedures, and practices used by the local educational agency in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of this chapter;
- b. [Requiresrequire ]any local educational agency determined to have a significant disproportionality to reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly, but not exclusively, children in those groups that were significantly overidentified; and
- c. [Requires require] the local educational agency to publicly report on the revision of policies, practices, and procedures addressing the disproportionality.

26. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures, and ensure that each local educational agency is informed of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that local educational agency. (34 CFR 300.121 and 34 CFR 300.150)

27. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met. (34 CFR 300.154(d) and (e))

28. Ensure that if the Virginia Department of Education provides direct services to children with disabilities, it complies with state and federal requirements as if it is a local educational agency and uses federal funds under Part B of the Act to provide services. (34 CFR 300.175)

a. The Virginia Department of Education [~~shall~~ may] use payments that would otherwise have been available to a local educational agency [under Part B of the Act ] to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of ~~[§1413(h) of the Act~~ the excess cost requirements as outlined in 8VAC20-81-260].

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

29. Ensure that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures as follows: (34 CFR 300.124)

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

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

30. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of information as specified in 34 CFR 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR 300.612 through 34 CFR 300.626. (34 CFR 300.123 and 34 CFR 300.610)

31. Ensure that a practical method is developed and implemented to: (34 CFR 300.170)

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

(1) Among local educational agencies in Virginia; or

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

b. Review discrepancies and, if appropriate, require the local educational agency to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of

positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

32. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities. (34 CFR 300.172)

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

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

33. Prohibit the Virginia Department of Education and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 USC §812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter. (34 CFR 300.174(a))

34. Monitor, enforce, and provide technical assistance regarding the implementation of the requirements under the Act. These actions include: (34 CFR 300.600 through 34 CFR [ ~~300.645~~ 300.609; 34 CFR 300.640 through 300.645 ] ; 34 CFR 300.149(b) and 34 CFR 300.165(b))

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

b. Taking appropriate enforcement and technical assistance measures to assist local educational agencies in complying with the provisions of the Act in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602 and 34 CFR 300.608.

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

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

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

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

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

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

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

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

### **Part III**

#### **Responsibilities of Local School Divisions and State-Operated Programs**

##### ***8VAC20-81-30. Responsibility of local school divisions and state-operated programs.***

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

B. Each local school division shall ensure that all children with [disabilities] aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education. (§22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR 300.209)

The children include:

1. Children with disabilities who are migrant;
2. Children with disabilities who are homeless;
3. Children with disabilities who are in need of special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade;
4. Children with disabilities who are served in a public nonprofit charter school;
5. Children with disabilities who have been suspended or expelled from school;
6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction, with the exception of those additional provisions identified in 8VAC20-81-110 I;
7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction;
8. Children with disabilities who are in foster care and residents of Virginia;
9. Children with disabilities who are placed for noneducational reasons; and
10. Children with disabilities regardless of citizenship or immigration status.

C. Every child with a disability is deemed to reside in a school division when [ (§22.1-3 of the Code of Virginia) ] :

1. The child is living with a biological parent whose parental rights have not been terminated.
2. The child is living with an adoptive parent.
3. The child is living with an individual:
  - a. Other than the custodial parent but who is defined as a parent in §22.1-1 of the Code of Virginia, not solely for school purposes, and
  - b. Pursuant to a special power of attorney executed under 10 USC §1044b by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.
4. The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the school division.
5. The parents of the child are unable to care for him and he is living, not solely for school purposes, with another person who resides in the school division and is either:
  - a. The court-appointed guardian, or has legal custody; or
  - b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under §63.2-900 of the Code of Virginia.

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

[7. The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.]

[78]. The child is in foster care and a resident of Virginia, but not a resident of the school division, under the following conditions: (§22.1-215 of the Code of Virginia)

- a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or
- b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of the school division.

[ 89 ]. The child is in foster care and a resident of Virginia, and a resident of the school division, under the provisions of subdivision [ 78 ] of this subsection.

D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)

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

1. The local school division that is part of the Comprehensive Services Act team that places the child in a private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.
2. If a child in foster care is placed in a local school division of nonresidence and the IEP team of the local school division of nonresidence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has responsibility for the child under the Comprehensive Services Act (Chapter 52 (§2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).
3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for ~~[the mentally retarded people with intellectual disabilities]~~ under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides~~[, unless the child is in a state-operated program].~~
4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides ~~[, unless the child is in a state-operated program].~~
5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for ~~[the mentally retarded people with intellectual disabilities]~~ under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides ~~[, unless the adult child with a disability is in a state-operated program].~~
6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides ~~[, unless the adult child is in a state-operated program].~~
7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, ~~[the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The~~ the adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.

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

[9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105-10 et seq., the child is a resident of the division where the parent(s) reside.]

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

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

H. Each state-operated program shall ensure that [the requirements in this chapter are applied to] children with disabilities, aged two to 21, inclusive, in that institution [~~have the right to a free appropriate public education~~]. (§22.1-7 of the Code of Virginia)

[1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.

[2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.]

I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division may, in the discretion of the local school board's policies and procedures, be admitted to the public schools of the school division for special education and related services. Tuition charges associated with this admittance are subject to the provisions of §22.1-5 of the Code of Virginia.

#### **8VAC20-81-40. Special education staffing requirements.**

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (§22.1.253.13:2 of the

Code of Virginia) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240).

1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.
  - a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.
  - b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities.
2. Personnel assignment.
  - a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).
  - b. Special education teachers who are the teachers of record [~~for instructing one or more federal core subjects to students with disabilities~~] shall be highly qualified.
  - c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.
  - d. Special education services include those services provided directly to the student and those provided indirectly.
3. Caseload standards.
  - a. The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.
  - b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.
    - (1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

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

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

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

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

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

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

#### B. Staffing for early childhood special education.

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

#### 2. Staffing requirements.

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

b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

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

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

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services [for children who are deaf or hard of hearing] are as follows:

a. Personnel providing educational interpreting services for children using sign language shall:

~~[(1)]~~ have a [valid] Virginia Quality Assurance Screening (VQAS) Level III, or

~~[(2)]~~ a passing score on the Educational Interpreter Performance Assessment (EIPA) ~~[ written test~~ Written Test] along with a minimum of a Level 3.5 on the EIPA ~~[performance test~~ Performance Test] or any other state [qualification] or national certification ~~([excluding Certificate of Deaf Interpretation National Interpreter Certification])~~ recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. ~~[Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.]~~

b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/language or hold a [national] Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) [or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing].

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

[2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with the following criteria:

a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or

b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.

3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:

a. Personnel providing educational interpreting services for children using sign language shall hold

(1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or

(2) a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.

(3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.

(4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.

b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.

(1) Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.

(2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.

c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.]

4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.

**8VAC20-81-50. Child find.**

A. Child find.

1. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who: (34 CFR 300.102 and 34 CFR 300.111)
  - a. Are highly mobile, such as migrant and homeless children;
  - b. Are wards of the state;
  - c. Attend private schools, including children who are home-instructed or home-tutored;
  - d. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade; and
  - e. Are under age 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.
2. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council. (34 CFR 300.124)
3. Each local school division shall locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools. (34 CFR 300.131, 34 CFR 300.133, 34 CFR 300.134)
  - a. The child find process shall be designed to ensure:
    - (1) The equitable participation of parentally placed private school children, and
    - (2) An accurate count of those children.
  - b. The local school division shall undertake activities similar to the activities undertaken for its public school children.
  - c. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR 300.133.
  - d. The child find process shall be completed in a time period comparable to that for students attending public school in the [LEA-local educational agency].
  - e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States.

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

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

B. Public awareness.

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

- a. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free appropriate public education and the availability of special education programs and services;
- b. Generate referrals; and
- c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

C. Screening.

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

- a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8VAC20-250-10. (§22.1-273 of the Code of Virginia)
- b. Children shall be screened for scoliosis in accordance with the requirements of 8VAC20-690-20. (§22.1-273.1 of the Code of Virginia)
- c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.
- d. Children who fail any of the above screenings may be rescreened if the original results are not considered valid.
- e. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia. (§22.1-270 of the Code of Virginia)
- f. Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.

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

- a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;
- b. Confidentiality; and
- c. Maintenance of the student's scholastic record.

3. Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)

D. [Referrals.]

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

2. Each school shall have a team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child's educational and behavioral needs.

a. The team shall include:

(1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);

(2) The principal or designee;

(3) At least one teacher; and

(4) At least one specialist.

b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.

c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.

3. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.

a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.

b. If the referral is made to the special education administrator or designee, the administrator shall within 3 business days:

(1) initiate the evaluation-eligibility process in accordance with 8VAC20-81-60; -70; -80;

(2) require that the school-based team review and respond to the request; or

(3) deny the request.

(a) If the request is denied, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures. (34 CFR § 300.507)

4. In reviewing the child's performance, the team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures. (34 CFR § 300.307)

a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.

b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services. (34 CFR § 300.309)

5. Timelines for Referral Process

a. The team shall meet within 10 business days following the receipt of the referral.

b. The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.

c. If the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing. (34 CFR § 300.507)

6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.

~~review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals. (34 CFR 300.309(e))~~

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

~~a. Tracking and reviewing timelines;~~

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

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

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

~~E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability. (34 CFR 300.507)~~

~~1. The local school division's procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.~~

~~2. If the school division decides not to evaluate, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.]~~

~~[FE]. Prohibition on mandatory medication [ (34 CFR 300.174) ].~~

~~1. The Virginia Department of Education prohibits state and [LEA-local educational agency] personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 USC §812(c)) for a child as a condition of attending school, receiving an evaluation under 34 CFR 300.300 through 34 CFR 300.311, or receiving services under this part.~~

~~2. Teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.~~

~~[ (34 CFR 300.174) ]~~

**8VAC20-81-60. Referral for initial evaluation.**

A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, [ø] other individuals, [or a school-based team in accordance with 8VAC20-81-50 D.5.b]. (34 CFR 300.301(b))

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

[3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected o having a disability, from a source other than the school-based team, the special education administrator, or designee, shall:

a. initiate the initial evaluation procedures under subsection B;

b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.(2);or

c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170.]

B. Procedures for referral for initial evaluation.

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

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

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

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

(1) The referral for evaluation,

(2) The purpose of the evaluation, and

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

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

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

f. Ensure that all evaluations consist of procedures that:

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

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

g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days [~~after the parent has provided written consent to the evaluation process of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action.~~]

The time frame shall not apply to the local school division if [(34 CFR 300.301 (d) and (e))] :

- (1) The parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or
- (2) If the child enrolls in a school served by the local school division after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the local school division is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and the local school division where the child is enrolled in school agree to a specific time when the evaluation will be completed.

h. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days. (34 CFR 300.300(a), 34 CFR 300.3049(c))

i. If the decision is to not evaluate, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's right to appeal the decision through due process hearing procedures. (34 CFR 300.507)

[~~32~~]. Parental consent requirements. (34 CFR 300.300)

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

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

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

d. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local school division is not required to obtain parental consent to determine whether the child is a child with a disability if:

- (1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;
- (2) The rights of the parents of the child have been terminated in accordance with Virginia law; or

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

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

e. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

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

**8VAC20-81-70. Evaluation and reevaluation.**

A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section.(34 CFR 300.122)

B. Determination of needed evaluation data for initial evaluation or reevaluation. (34 CFR 300.305 and 34 CFR 300.507)

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

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

- (1) Evaluations and information provided by the parent(s) of the child;
- (2) Current classroom-based, local, or state assessments and classroom-based observations; and
- (3) Observations by teachers and related services providers; and

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

- (1) Whether the child is, or continues to be, a child with a disability;
- (2) The present educational needs of the child;
- (3) The child's present level of academic achievement and related developmental needs; ~~and~~
- (4) Whether the child needs or continues to need special education and related services; and

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

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. Requirements if additional data are not needed:

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

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

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

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

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

4d]. This process shall be considered the evaluation if no additional data are needed.

5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.

C. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. (§22.1-214 of the Code of Virginia; 34 CFR 300.304 and 34 CFR 300.310)

1. ~~[Tests-Assessments]~~ and other evaluation materials used to assess a child under this chapter are:

a. selected and administered so as not to be discriminatory on a racial or cultural basis;

~~[2b. Each assessment and other evaluation materials shall be]~~provided and administered in the ~~[child's native]~~ language and ~~[in the]~~ form most likely to yield accurate information on what the child

knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

c. are used for the purposes for which the assessments or measures are valid and reliable; and  
d. are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments. ]

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

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

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

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

~~a. Have been validated for the specific purpose for which they are used; and~~  
~~b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests. ]~~[75]. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.

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

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

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

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

[4210]. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

[4311]. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

[4412]. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.

[4513]. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

[4614]. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.

a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.

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

D. [A written copy of the evaluation report shall be provided at no cost to the parent(s). The [ ~~report~~ evaluation report(s)] shall be available to the parent(s) no later than two business days before the meeting to determine eligibility. (34 CFR 300.306(a)(2))

[ 1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.

2. The evaluation report(s) shall be provided to the parent(s) at no cost. ]

E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as

possible, consistent with ~~[8VAC20-81-120~~ 8VAC20-81-60 B.1.g.], to ensure prompt completion of full evaluations. (34 CFR 300.304(c)(5))

F. Reevaluation.

1. A reevaluation shall be conducted: (34 CFR 300.303(a) and (b)(2))

- a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;
- b. If the child's parent(s) or teacher requests a reevaluation; or
- c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.

2. The local educational agency shall not conduct a reevaluation more than once a year unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the parent(s) with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.303(b)(1))

3. ~~[The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B of this section in determining:~~ (34 CFR 300.305(a))

- ~~a. Whether the child continues to have a disability;~~
- ~~b. The child's educational needs, including the present levels of academic achievement and related developmental needs of the child;~~
- ~~c. Whether the child continues to need special education and related services; or~~
- ~~d. Whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general education curriculum.~~

4. ~~The local educational agency shall administer tests and other evaluation materials, in accordance with subsection B of this section, as may be needed to produce the data identified in subdivision 3 of this subsection. (34 CFR 300.305(c))~~

5. ~~Requirements if additional data are not needed: (34 CFR 300.305(d))~~

- ~~a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding:~~
  - ~~(1) The determination and the reasons for it; and~~
  - ~~(2) The right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.~~

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

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

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

G. Parental consent for reevaluation. [ (34 CFR 300.300(c) and (d)) ]

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

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

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

2. Parental consent is not required before:

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

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

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

3. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. ~~[ (34 CFR 300.300(c) and (d)) ]~~

In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8VAC20-81-150 for parentally placed students.

H. Timelines for reevaluations.

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.

2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days [from the date of the parent's consent of the receipt of the referral by the special education administrator or designee for] the evaluation.

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

I. The [~~LEA~~-local educational agency] is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency is required to provide the parent with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.305(e)(2))

### **8VAC20-81-80. Eligibility.**

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

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

C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and [~~needs~~ requires] special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110. (34 CFR 300.306, 34 CFR 300.308)

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

- a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;
- b. Interpret assessment and intervention data, and apply critical analysis to those data; and
- c. Develop appropriate educational and transitional recommendations based on the assessment data.

2. The eligibility group composition.

- a. The group may be an IEP team, as defined in 8VAC20-81-110, as long as the above requirements and notice requirements of 8VAC20-81-170 are met.
- b. The group shall include, but not be limited to:
  - (1) Local educational agency personnel representing the disciplines providing assessments;
  - (2) The special education administrator or designee;
  - (3) The parent(s);

- (4) A special education teacher;
- (5) The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and
- (6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.

D. Procedures for determining eligibility and educational need. (34 CFR 300.306 through 34 CFR 300.311)

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

- a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- b. Ensure that information from all these sources is documented and carefully considered.

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

3. Observation.

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

~~[ba]. The local educational agency shall [(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8VAC20-81-170.~~

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

~~[(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation. b. The eligibility group, in determining whether a child is a child with a disability shall:~~

~~(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or~~

(2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.

c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.]

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

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

- (1) Phonemic awareness,
- (2) Phonics,
- (3) Vocabulary development,
- (4) Reading fluency, including oral reading skills, and
- (5) Reading comprehension strategies;

b. Lack of appropriate instruction in math; or

c. Limited English proficiency.

5. The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. The documentation of the determination of eligibility [This documentation] shall include a statement of:

a. Whether the child has a specific disability.

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

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

d. The educationally relevant medical findings, if any.

e. The instructional strategies used and the student-centered data collected if [the child has participated in] a response to scientific, research-based intervention process [~~was implemented and whether the child does not achieve commensurate with the child's age~~]. This document shall also include:

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

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

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

f. For identification of [a child with a specific] learning [disabilities-disability], whether [consistent with the requirements of subdivision T 2 a and T 2 b of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and

(1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or]

[(2) the child exhibits a pattern of there are ]strengths and weaknesses in performance, ~~or~~ achievement, or both, ~~[or there are strengths and weaknesses in performance or achievement or both]~~ relative to [age, Virginia-approved grade-level standards or] intellectual development~~[in one or more of the areas listed in subsection K of this section]~~.

[g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T 2 c of this section].

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

7. The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall submit a written statement presenting that member's conclusions.

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

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

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

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

E. Nothing in this chapter requires that children be identified by their disability on IEPs, local educational agency communications to parents regarding eligibility determinations, or other similar communications to parents. For such communications, local educational agencies shall identify that each child has a disability under this chapter and by reason of that disability needs special education and related services, and is regarded as a child with a disability.

F. Eligibility for related services. A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team. (34 CFR 300.34 and 34 CFR 300.306(c)(2))

G. Two-year-old children previously served by Part C. A child, aged two, previously participating in early intervention services assisted under Part C of the Act, shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age two, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child. (34 CFR 300.124)

~~[H.~~

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

H. For all children suspected of having a disability, local educational agencies shall:

1. use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and

2. have documented evidence that by reason of the disability, the child needs special education and related services.~~I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability. (34 CFR 300.307(b))]~~

~~[J]. The Virginia Department of Education permits each local educational agency to use a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and permits each local educational agency to use other alternative research-based intervention and procedures. (34 CFR 300.307)~~

~~[K]. Eligibility as a child with autism.~~

[1. The group may determine that a child has autism if:

a. there is an adverse effect on the child's educational performance due to documented characteristics of autism, as outlined in this section; and

b. the child has ~~4. Any~~ any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder,] such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references, ~~such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), may be included under the eligibility category of autism].~~

[(1) Children with Asperger's Disorder demonstrate the following characteristics:

(a) impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction, failure to develop peer relationships appropriate to developmental level, a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest), or lack of social or emotional reciprocity are noted; and

(b) ~~Students with autism demonstrate]~~ restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms [(i.e., hand or finger flapping or twisting, or complex whole-body movements)], persistent preoccupation with parts of objects

[(2) Children with autistic disorder, in addition to the characteristics listed in subdivision (1)(a) and (1)(b) above, also demonstrate ~~2. A minimum of six characteristics from the following~~

communication and social interaction areas shall be present to be considered for eligibility.

a. ~~One or more]~~ impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). ~~[in-]n]~~ individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level [is noted].

~~[b. Two or more impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction, failure to develop peer relationships appropriate to developmental level, a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people~~

~~(i.e., by a lack of showing, bringing, or pointing out objects of interest), or lack of social or emotional reciprocity are noted. Delay(s) or abnormal functioning in social interaction, language as used in social communication, or symbolic or imaginative play, with onset prior to age three are also evident.~~

(3) Children with Pervasive Developmental Disorder-Not Otherwise Specified or Atypical Autism may display any of the characteristics listed in subdivisions (1)(a), (1)(b), and (2) without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

K. Eligibility as a child with deaf-blindness. The group may determine that a child has deaf-blindness if the definition of "deaf-blindness" as outlined in 8VAC20-81-10 is met.]

[M]. Eligibility as a child with deafness.

1. The group may determine that a child has deafness if:

- a. the definition of "deafness" is met in accordance with 8VAC20-81-10;
- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of an deafness, as outlined in subdivision 2 of this subsection; and
- c. the child has a ~~2.~~ 1. Deafness may apply to a documented bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), and/or cortical deafness. ~~This hearing loss results in qualitative impairments in communication/educational progress due to delays in one or more of the following: expressive/receptive vocabulary development, expressive/receptive language development (in English/primary language of the family or in sign language), speech development, written English skills.~~

[N]. Eligibility as a child with developmental delay. (34 CFR 300.111(b))

1. [The group may determine that a child has a developmental delay if:

- a. ] the local educational agency [may include permits the use of] developmental delay as [one of thea] disability [categories category ]when determining whether a preschool child, aged two by September 30 to five, inclusive, is eligible under this chapter; [and]
- [b.the definition of "developmental delay" is met in accordance with 8VAC20-81-10; or
- c. the child has a ]physical or mental condition which has a high probability of resulting in a developmental delay.

[2. Eligibility as a child with a disability for children ages 2 through 5 shall not be limited to developmental delay if eligibility can be determined under another disability category.

3. A local educational agency is not required to adopt and use developmental delay as a disability category for any children within its jurisdiction. If the local educational agency permits the use of

developmental delay as a disability category, it shall comply with the eligibility criteria outlined in this section.

~~2. Other disability categories may be used for any child with a disability aged two to five, inclusive][N.~~

Eligibility as a child with an emotional disability.

1. The group may determine that a child has an emotional disability if:

- a. the definition of "intellectual disability" is met in accordance with 8VAC20-81-10; and
- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of an emotional disability.]

O. Eligibility as a child with [ a ] hearing impairment.

[1. The group may determine that a child has a hearing impairment if:

- a. the definition of "hearing impairment" is met in accordance with 8VAC20-81-10; and
- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of a hearing impairment, as outlined in subdivision 2 of this subsection.

2. Characteristics of children with a hearing impairment include unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dys-synchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance.

3. The term "hard of hearing" may be used in this capacity.

~~Students suspected of having a hearing impairment shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.]~~

P. Eligibility as a child with ~~[mental retardation]~~ an intellectual disability].

[1. The group may determine that a child has an intellectual disability if:

- a. the definition of "intellectual disability" is met in accordance with 8VAC20-81-10;
- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of an intellectual disability, as outlined in subdivision 2 of this subsection; and
- c. the child has:.

~~(1) The terms intellectual disability and cognitive impairment may be used to describe this category. The child exhibits] significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the [test-assessment], on an individually administered, standardized measure of [intelligence-intellectual functioning];~~

~~[(2) The child also concurrently exhibits concurrently], significantly impaired adaptive behavior [in the home or community] as determined by a composite score on an individual standardized~~

instrument [of adaptive behavior] that measures two standard deviations or more below the mean;  
[and]

[(3) Developmental-developmental] history [(birth through 18)-that] indicates significant impairment in cognitive/intellectual [abilities functioning] and a current demonstration of significant impairment is present.

[Q. Eligibility as a child with multiple disabilities. The group may determine that a child has multiple disabilities if the definition of “multiple disabilities” is met in accordance with 8VAC20-80-10.]

[R. Eligibility as a child with an orthopedic impairment.

1. The group may determine that a child has an orthopedic impairment if:

- a. the definition of “orthopedic impairment” is met in accordance with 8VAC20-81-10; and
- b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of an orthopedic impairment.]

[S. Eligibility as a child with other health impairment.

1. [The group may determine that a child has an other health impairment if:

- a. the definition of “other health impairment” is met in accordance with 8VAC20-81-10; and
- b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of the other health impairment.]

[ Attention-deficit/hyperactivity disorder as indicated in diagnostic references, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), involve the following characteristics.

a. The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, or a Personality Disorder). The child shall exhibit six or more of the following symptoms of inattention that have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

- (1) Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;
- (2) Often has difficulty sustaining attention in tasks or play activities;
- (3) Often does not seem to listen when spoken to directly;
- (4) Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions);
- (5) Often has difficulty organizing tasks and activities;
- (6) Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework);

~~(7) Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);~~

~~(8) Often easily distracted by extraneous stimuli;~~

~~(9) Often forgetful in daily activities; or~~

~~b. A child shall exhibit six or more of the following symptoms of hyperactivity-impulsivity and have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:~~

~~(1) Often fidgets with hands, feet, or squirm in seat;~~

~~(2) Often leaves seat in classroom or in other situations in which remaining seated is expected;~~

~~(3) Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);~~

~~(4) Often has difficulty playing or engaging in leisure activities quietly;~~

~~(5) Is often "on the go" or often acts as if "driven by a motor" and often talks excessively; impulsivity;~~

~~(6) Often blurts out answers before questions have been completed;~~

~~(7) Often has difficulty awaiting turn; and~~

~~(8) Often interrupts or intrudes on others; or~~

~~c. If criteria for combined type inattention and hyperactivity are met for the past six months. Some hyperactive-impulsive or inattentive symptoms that caused the impairment were present before age 7 years. Some impairment from the symptoms is present in two or more settings (e.g., at school, or work, and at home).~~

~~2. Eligibility may also apply to children with Tourette Syndrome or acute health problems such as those found in the definition of "Other health impairment" at 8VAC20-81-10.~~

~~Eligibility criteria includes limited strength, vitality, or alertness and other elements as described in the definition of "Other health impairment" at 8VAC20-81-10.]~~

~~[KT.] Eligibility of a child with a specific learning disability. (34 CFR 300.307 and 34 CFR [300.314-300.309])~~

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

a. the definition of "specific learning disability" is met in accordance with 8VAC20-81-10; and

b. the criteria for determining the existence of a specific learning disability are met.

2. The criteria for determining the existence of a specific learning disability are met if:

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

(1) Oral expression;

- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skills;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematical calculations; or
- (8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision [ 4~~2~~ ] a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70; and

c. The group determines that its findings under subdivision ~~2~~ 4-a and b of this subsection are not primarily the result of:

- (1) A visual, hearing, or motor impairment;
- (2) [~~Mental retardation~~ Intellectual disability];
- (3) Emotional [~~disturbance~~ disability];
- (4) Environmental, cultural, or economic disadvantage; or
- (5) Limited English proficiency.

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

~~A specific learning disability:~~

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

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

~~c. Data-based documentation reflecting student progress was collected.][3. The Virginia Department of Education does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. (34 CFR 300.307(a))~~

[RU]. Eligibility as a child with speech or language impairment.

1. The group may determine that a child has a speech or language impairment if:

a. the definition of "speech or language impairment" is met in accordance with 8VAC20-81-10;

b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of speech or language impairment;

c. the child has a ~~The communication disorder results in~~ a] significant discrepancy from typical communication skills in one or more of the following areas; fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and

d.] Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment.

[ 2. ] Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of socio-cultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.

[ 3. ] Speech language pathology services may be special education or a related service.

IV. Eligibility as a child with a traumatic brain injury.

1. The group may determine that a child has a traumatic brain injury if:

a. the definition of "traumatic brain injury" is met in accordance with 8VAC20-81-10; and

b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of traumatic brain injury.]

[SW]. Eligibility as a child with a visual impairment.

1. [The group may determine that a child has a visual impairment if:

a. the definition of "visual impairment" is met in accordance with 8VAC20-81-10;

b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of visual impairment; and

c. the child

(1) demonstrates the characteristics of blindness or visual impairment, as outlined in subdivisions 2 and 3 of this subsection; or

(2) has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision, which may in the future, have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.

2. A child with blindness demonstrates the following:

a. Visual acuity in the better eye with best possible correction of 20/200 or less at distance and/or near; and/or

b. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.

3. A child with a visual impairment demonstrates the following:

- a. Visual acuity better than 20/200 but worse than 20/70 at distance and/or near; and/or
- b. Visual field restriction in the better eye of remaining visual field of 70 degrees or less but better than 20 degrees.

~~The child evidences at least one of the following characteristics.~~

~~a. Visual acuity in the better eye with best possible correction of:~~

~~(1) 20/200 or less at distance and/or near is considered blindness.~~

~~(2) Better than 20/200 but worse than 20/70 at distance and/or near is considered visual impairment.~~

~~b. Visual field restriction in the better eye:~~

~~(1) Remaining visual field of 20 degrees or less is considered blindness.~~

~~(2) Remaining visual field of 70 degrees or less but better than 20 degrees is considered visual impairment.~~

~~2. Special conditions, include, but are not limited to, oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision (documented medically and educationally), which may in the future, affect the student's ability to learn visually or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.~~

~~3. Students suspected of being blind or having a visual impairment, shall have an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the student's future needs for instruction in Braille or the use of Braille.]~~

~~[FX]. Children found not eligible for special education.~~

~~1. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence. (34 CFR 300.622)~~

~~2. If the school division decides that a child is not eligible for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures. (34 CFR [ 300.503 ]-300.507)~~

**8VAC20-81-90. Termination of special education and related services.**

A. [Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.]

[1. Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.]

[2. The] local educational agency shall evaluate a child with a disability in accordance with 8VAC20-81-70 before determining that the child is no longer a child with a disability under this chapter.

[3.] Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22. (34 CFR 300.305(e))

B. The IEP team shall terminate the child's eligibility for ~~[special education and related services in the following areas:~~

~~1 Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services. 2. A a ] related service [may be terminated during an IEP meeting ]without determining that the child is no longer a child with a disability who is eligible for special education and related services.~~

~~[ 1. ] The IEP team [making the shall make this] determination [shall include local educational agency personnel representing the specific related services discipline being terminated based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.]~~

[C. Written parental consent shall be required prior to any partial or complete termination of services.]

[D.] Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C~~f~~, but parental consent is not required.]

[E]. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the ~~[eligibility]~~ procedures in 8VAC20-81-80 to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child. (34 CFR 300.9 and 34 CFR 300.305(e))

[F]. Summary of academic achievement and functional performance. (34 CFR 300.305(e)(3))

1. For a child whose eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22, the local educational agency shall provide the child with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the local educational agency may provide the child with a summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the local

educational agency shall provide the child with an updated summary when the child exits, or when the child's eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

**8VAC20-81-100. Free appropriate public education.**

A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the [definition of “]age of eligibility [“requirements—as outlined] in 8VAC20-81-10 and who reside within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they have not failed or been retained in a course or grade and are advancing from grade to grade, and students who have been suspended or expelled from school in accordance with the provisions of 8VAC20-81-160. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015. (§22.1-213 of the Code of Virginia; 34 CFR 300.101 and 34 CFR 300.109)

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

b. The services and placement needed by each child with a disability to receive a free appropriate public education shall be based on the child's unique needs and not on the child's disability.

2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to: (34 CFR 300.102(a))

a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to age-eligible students who have graduated but have not been awarded a standard or advanced studies high school diploma, or to those students who have been awarded a general educational development (GED) credential.

b. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

c. Children with disabilities who are eligible under IDEA Part B, Subpart H, but who receive early intervention services under IDEA Part C.

B. A free appropriate public education shall be available to children with disabilities who reside within a school division but do not hold a valid U.S. citizenship or a student visa.

C. Program options. Each local school division shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (34 CFR 300.110)

D. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, shall be at no cost to the parents of the child. (34 CFR 300.104)

E. Assistive technology devices. [ (34 CFR 300.34(b) and 34 CFR 300.113) ]

1. Each local educational agency shall ensure that the following are functioning properly, including completing routine checks:

- a. Hearing aids worn in school by children with hearing impairments, including deafness; and
- b. The external components of surgically implanted devices.

2. A local educational agency is not responsible for the postsurgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device.) [ ~~(34 CFR 300.34(b) and 34 CFR 300.113)~~ ]

F. Availability of assistive technology. (34 CFR 300.105)

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 8VAC20-81-10, are made available to a child with a disability if required as part of the child's:

- a. Special education;
- b. Related services; or
- c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

3. Local educational agencies are not required to provide personal devices, including eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.

G. Transportation. (§§22.1-221 and 22.1-347 of the Code of Virginia; 34 CFR 300.107)

1. Each child with a disability, aged two to 21, inclusive, placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications shall be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.

3. A local educational agency shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.

4. If a local educational agency enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent(s).

5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at Staunton [~~or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~], the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

H. Nonacademic and extracurricular services and activities. (34 CFR 300.107 and 34 CFR 300.117)

1. Each local educational agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. [(See also 8VAC20-81-130 A.2.)]

2. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

I. Physical education. (34 CFR 300.108)

1. General. Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a free appropriate public education, unless the local educational agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.

2. Regular physical education. Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:

- a. The child is enrolled full time in a separate facility; or
- b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.

3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the local educational agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

4. Education in separate facilities. The local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with ~~subdivision 3 of~~ this subsection.

J. Extended school year services. (34 CFR 300.106)

1. Each local educational agency shall ensure that extended school year services, including transportation to and from such services, are available as necessary to provide a free appropriate public education consistent with subdivision 2 of this subsection.

2. Extended school year services shall be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.

3. In implementing the requirements of this section, a local educational agency may not:

- a. Limit extended school year services to particular categories of disability;
- b. Unilaterally limit the type, amount, or duration of those services; or
- c. Limit the provision of extended school year services to only the summer.

K. Children with disabilities in public charter schools. (34 CFR 300.209)

1. Children with disabilities who attend charter schools shall be served by the local school division in the same manner as children with disabilities in its other schools, including the provision of

supplementary and related services on site at the charter school to the same extent to which the [LEA local educational agency] provides such services on the site to its other public schools.

2. The local school division shall ensure that all requirements of this chapter are met.

L. Length of school day. School-aged students with disabilities shall be provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise. [For preschool-aged children with disabilities, the IEP team determines the length of the school day.]

M. Methods and payments. (34 CFR 300.103)

1. The Virginia Department of Education may use whatever state, local, federal, and private sources of support [that ]are available to meet the requirements of this part.

2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

N. Disability harassment. Each local educational agency shall have in effect policies that prohibit harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)

**8VAC20-81-110. Individualized education program.**

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by: (34 CFR 300.112)

1. A local school division; or

2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, each local educational agency shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue. (34 CFR 300.323(a))

2. Each local educational agency shall ensure that an IEP: (34 CFR 300.323(c))

a. Is in effect before special education and related services are provided to an eligible child;

b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;

c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and

d. Is implemented as soon as possible following parental consent to the IEP, ~~[ not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay].~~

3. Each local educational agency shall ensure that: (34 CFR 300.323(d))

a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Teachers and providers are informed of:

(1) Their specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

4. Each local educational agency is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.

5. Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))

a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted under this chapter;

c. Information about the child provided to or by the parent(s);

d. The child's anticipated needs; or

e. Other matters.

6. Each local educational agency shall provide special education and related services to a child with a disability in accordance with the child's IEP. (~~[34 CFR 300.350(a)]~~ 34 CFR 300.323 (c)(2))

~~[7. This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance.]~~

[87]. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.

~~[If the local educational agency considers the parent's request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent's request and provide the parent information on this chapter's dispute resolution options.]~~

[98]. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))

[409]. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent(s) and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))

- a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes.
- b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.
- c. This meeting is not a substitute for the required annual IEP meeting.

#### C. IEP team.

1. General. The local educational agency shall ensure that the IEP team for each child with a disability includes: (34 CFR 300.321(a) ~~and (c)~~ (c) and (d))

- a. The parent(s) of the child;
- b. Not less than one regular education teacher of the child (if the child is or may be participating in the regular educational environment);
- c. Not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist;
- d. A representative of the local educational agency who is:
  - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
  - (2) Knowledgeable about the general education curriculum; and
  - (3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;
- e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child;
- f. At the discretion of the parent(s) or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The

determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or local educational agency) who invited the individual to be a member of the team; and  
g. Whenever appropriate, the child.

2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.

3. Secondary transition service participants. (34 CFR 300.321(b))

a. The local educational agency shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

- (1) The student's postsecondary goals;
- (2) The needed transition services for the student; or
- (3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Part C transition participants. In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's(s') request, invite the Part C service coordinator or other representatives of the Part C system [to the initial IEP meeting] to assist with the smooth transition of services. (34 CFR 300.321(f))

D. IEP team attendance. (34 CFR 300.321(e))

1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

- a. The parent and the local educational agency consent in writing to the excusal; and
- b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

E. Parent participation.

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))

- a. Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and
- b. Scheduling the meeting at a mutually agreed on time and place.

2. Notice. (34 CFR 300.322(b))

a. General notice. The notice given to the parent(s):

- (1) May be in writing, or given by telephone or in person with proper documentation;
- (2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and
- (3) Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child [under subdivision C 1 f of this section].

b. Additional notice requirements are provided if transition services are under consideration.

- (1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system [under subdivision C 4 of this section].
- (2) For secondary transition, the notice shall also:
  - (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
  - (b) Indicate that the local educational agency will invite the student; and
  - (c) Identify any other agency that will be invited to send a representative.

3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences. If the local educational agency uses an alternative means of meeting participation that results in additional costs, the local educational agency is responsible for those costs. (34 CFR 300.322(c))

4. A meeting may be conducted without a parent(s) in attendance if the local educational agency is unable to convince the parent(s) that they should attend. In this case, the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence [(written, electronic, or facsimile)] sent to the parent(s) and any responses received; or

c. Detailed records of visits made to the parent's(s') home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))

~~[6. Audio and video recording of IEP meetings.~~

~~a. The local educational agency shall permit the use of audio recording devices at IEP meetings convened to determine a child's eligibility under 8VAC29081080, to develop, review, or revise the child's IEP under subsection F of this section, and to review discipline matters under 8VAC E. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent or parents shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records the meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes part of the child's educational record.~~

~~b. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:~~

- ~~(1) Video recording devices at IEP meetings; or~~
- ~~(2) Audio or video recording devices at meetings other than those meetings that are identified in subdivision 6.a. of this subdivision. for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.~~

~~c. These policies shall:~~

~~(1) Stipulate that the recordings become part of the child's educational record;~~

~~(2) Ensure that the policy is uniformly applied; and~~

~~(3) If the policy limits or prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter][76]. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.~~

[87]. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, [or within a reasonable period of time after the IEP meeting, not to exceed but no later than] 10 calendar days~~[from the date of the IEP meeting]~~. (34 CFR 300.322(f))

F. Development, review, and revision of the IEP. (34 CFR 300.324(a))

1. In developing each child's IEP, the IEP team shall consider:

- a. The strengths of the child;
- b. The concerns of the parent(s) for enhancing the education of their child;
- c. The results of the initial or most recent evaluation of the child; and
- d. The academic, developmental, and functional needs of the child.

2. The IEP team also shall: (34 CFR 300.324(a))

- a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;
- b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
- d. Consider the communication needs of the child;
- e. Consider the child's needs for benchmarks or short-term objectives:

[ef]. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

[fg]. Consider whether the child requires assistive technology devices and services.

3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))

4. The regular education teacher of a child with a disability, as a member of the IEP team, shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))

- a. Appropriate positive behavioral interventions and supports and other strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.

5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))

a. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or

b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.

6. The IEP team shall consider all factors identified under a free appropriate public education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall provide the parent(s) with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81-170 [ C ] .

G. Content of the individualized education program. The IEP for each child with a disability shall include:

1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))

a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.

b. The present level of performance shall directly relate to the other components of the IEP.

2. A statement of measurable annual goals, including academic and functional goals designed to: (34 CFR 300.320(a)(2))

a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and

b. Meet each of the child's other educational needs that result from the child's disability.

3.[If determined appropriate by the IEP team, as outlined in subdivision F.2., a description of benchmarks or short-term objectives.] For children with disabilities who take alternate assessments aligned to alternate achievement standards, [the IEP shall include a] description of benchmarks or short-term objectives. (34 CFR 300.320(a)(2))

[a. The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.]

4. A statement of the special education and related services and supplementary aids and services, [based on peer-reviewed research to the extent practicable,] to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to [enable] the child: (34 CFR 300.320(a)(4))

- a. To advance appropriately toward attaining the annual goals;
- b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
- c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.

5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section. (34 CFR 300.320(a)(5))

6. The following information concerning state and divisionwide assessments shall be included: (34 CFR 300.320(a)(6))

a. A statement of any individual [appropriate] accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;

b. If the IEP team determines that the child ~~[will not participate in]~~ must take an alternate assessment instead of] a particular state assessment of student achievement (or part of an assessment), a statement of:

(1) Why~~[that assessment is not appropriate for the child]~~ the child cannot participate in the regular assessment;

(2) ~~[How the child will be assessed, including participation in the alternate assessment for those students who meet]~~ Why the particular assessment selected is appropriate for the child, including that the child meets] the criteria for the alternate assessment; and

(3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

c. A statement that the child shall participate in either ~~[the a]~~ state assessment for all children that is part of the state assessment program or the state's alternate assessment;

d. A statement of any individual [appropriate] accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;

e. If the IEP team determines that the child ~~[will not participate in~~ must take an alternate assessment instead of a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why ~~[that assessment is not appropriate for the child~~ the child cannot participate in the regular assessment];

(2) ~~[How the child will be assessed~~ Why the particular alternate assessment selected is appropriate for the child]; and

(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. ~~[Location refers to the continuum of alternative placements in 8VAC20-81-130-B.]~~(34 CFR 300.320(a)(7))

8. A statement of: (34 CFR 300.320(a)(3))

a. How the child's progress toward the annual goals will be measured; and

b. When periodic reports on the progress the child is making toward meeting the [annual] goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, [and at least as often as parents are informed of the progress of their children without disabilities].

9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))

a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.

b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§1431 et seq.) including:

(1) A statement regarding natural environments, and

(2) A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

c. These components of the child's IFSP may be incorporated into the child's IEP.

10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))

a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually [thereafter], the IEP shall include [age-appropriate]:

(1) ~~[Appropriate]~~measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; ~~[and]~~

(2) ~~[The]~~transition services, including courses of study ~~[(such as participation in advanced placement course or career and technical education program),]~~ needed to assist the child in reaching those goals. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements in subdivision 10.a. of this subsection, the IEP shall also include ~~(3) A~~ a statement, if appropriate, of interagency responsibilities or any linkages.

~~[b.c.]~~ For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

~~[c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.]~~ 11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student ~~[and parent(s) has have]~~ been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR 300.320(c))

H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.

2. All requirements regarding IEP development, review, and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment

requirements to graduate with a modified standard, standard, or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.

3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:

- a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.
- b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.
- c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

**8VAC20-81-120. Children who transfer.**

A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to a local educational agency in Virginia within the same school year are subject to the following provisions. (34 CFR 300.323(e), (f), and (g))

1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.

- a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.
- b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.

2. The new local educational agency shall provide a free appropriate public education to the child, [including ensuring that the child has available special education and related services,] in consultation

with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:

- a. Adopts [and implements ]the child's IEP from the previous local educational agency[ with the parent's consent]; or
- b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP [with the parent's consent ]that meets the requirements in this chapter.

3. The [new] local educational agency may develop and implement an interim IEP [with the parent's consent ]while obtaining and reviewing whatever information is needed to develop a new IEP.

4.~~[ If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, if the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.]~~[The the] parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. [During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.]

B. The new local educational agency shall provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.

C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.

[1.] During the evaluation period, [child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.]

[2.] ~~the~~The local educational agency shall [inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter. provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.]

D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local educational agency, the new local educational agency shall review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team is responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new local educational agency from the former Comprehensive Services Act team. (The CSA Implementation Manual)

**8VAC20-81-130. Least restrictive environment and placements.**

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure: (34 CFR 300.114)

a. That to the maximum extent appropriate, children with disabilities, [aged two to 21, inclusive], including those in public or private institutions or other care facilities, are educated with children without disabilities; and

b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic and extracurricular services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. The local educational agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings. [(See also 8VAC20-81-100 H.)] (34 CFR 300.117)

3. For children placed by local school divisions in public or private institutions or other care facilities, the local educational agency shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

B. Continuum of alternative placements. (§22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, [aged two to 21, inclusive], for special education and related services.

2. The continuum shall:

a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, [including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions]; and

b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular education class placement. The continuum includes integrated service delivery, which occurs when some or all goals, including benchmarks and

objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities is acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

C. Placements. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131); 34 CFR 300.116)

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team shall revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

**8VAC20-81-140. Placement of children at the Virginia School for the Deaf and the Blind at Staunton~~[or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton]~~.**

A. Placements are made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton ~~[-or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton]~~-(Virginia[~~schools~~ school]). The Virginia [~~schools~~ school] shall determine if the student meets the admission criteria of the Virginia [~~schools~~ school]. (§22.1-348 of the Code of Virginia)

B. When an eligible child is placed in the Virginia [~~schools~~ school], the local school division is responsible for ensuring compliance with the requirements of this chapter.

C. For students who are residential students, the [~~respective~~] Virginia school is responsible for transportation. For students who are day students, the placing local school division is responsible for transportation to and from the school. (§22.1-347 C of the Code of Virginia)

**8VAC20-81-150. Private school placement.**

A. Private school placement by a local school division or Comprehensive Services Act team.

1. When a child with a disability is placed by a local school division or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private special education school or facility that is licensed or has a certificate to operate, the local school division is responsible for ensuring compliance with the requirements of this chapter, including participation in state and divisionwide assessments. The local school division shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in a private school or facility. (34 CFR 300.325(c))

2. Before a local school division places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the local school division shall initiate and conduct a meeting in accordance with 8VAC20-81-110 to develop an IEP for the child. The local school division shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a))

3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, the local school division shall ensure that a representative of the private school or facility attends the IEP meeting. If the representative cannot attend, the local school division shall use

other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a)(2))

4. After a child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division. (34 CFR 300.325(b)(1))

5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent(s) and a local school division representative: (34 CFR 300.325(b)(2))

- a. Are involved in any decision affecting the child's IEP;
- b. Agree to any proposed changes in the program before those changes are implemented; and
- c. Are involved in any meetings that are held regarding reevaluation.

6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with the local school division. (34 CFR 300.325(c))

7. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter are extended to the child. (34 CFR 300.101)

8. If the parent(s) requests a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent(s) and the local educational agency prior to placement by the Comprehensive Services Act team. (34 CFR 300.2(c))

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children in accordance with the Code of Virginia. (§22.1-218.1 of the Code of Virginia)

**B. Placement of children by parents if a free appropriate public education is at issue.**

1. Local school divisions are not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local school division made a free appropriate public education available to the child and the parent(s) elected to place the child in a private school or facility. (34 CFR 300.148(a))

2. Disagreements between a parent(s) and a local school division regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of [ ~~8VAC20-81-200~~ 8VAC20-81-210 ]. (34 CFR 300.148(b))

3. If the parent(s) of a child with a disability, who previously received special education and related services under the authority of a local school division, enrolls the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division,

a court or a special education hearing officer may require the local school division to reimburse the parent(s) for the cost of that enrollment if the court or the special education hearing officer finds that the local school division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a special education hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by the local school division. (34 CFR 300.148(c))

4. The cost of reimbursement described in this section may be reduced or denied: (34 CFR 300.148(d))

a. If:

(1) At the most recent IEP meeting that the parent(s) attended prior to removal of the child from the public school, the parent(s) did not inform the IEP team that they were rejecting the placement proposed by the local school division to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(2) At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent(s) did not give written notice to the local school division of the information described above;

b. If, prior to the parent's(s') removal of the child from the public school, the local school division informed the parent(s), through proper notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) did not make the child available for the evaluation; or

c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s).

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's(s') failure to provide the notice to the local school division if: (34 CFR 300.148(e))

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent(s) from providing the notice; or

d. The parent(s) had not received notice of the notice requirement in this section.

C. Parentally placed private school children with disabilities. The provisions of this section apply to children with disabilities who are enrolled by their parent(s) in private schools.

1. ~~[ Definitions applicable to this subsection. The following definitions are applicable for purposes of this subsection ] . [(34 CFR 300.36)]~~

a. The term "private school" includes:

- (1) Private, denominational, or parochial schools in accordance with §22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
- (2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
- (3) Students who are home-tutored in accordance with §22.1-254 of the Code of Virginia; or
- (4) Students who receive home instruction in accordance with §22.1-254.1 of the Code of Virginia.

b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. (34 CFR 300.13)

c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12. [(34 CFR 300.36)]

2. Child find. (§22.1-254.1 of the Code of Virginia; 34 CFR 300.130, 34 CFR 300.131(a) and (b), 34 CFR 300.132(a) and 34 CFR 300.134(a))

a. Each school division shall locate, identify, and evaluate all children with disabilities who are parentally placed in private schools located in the school division. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.

b. Each local school division shall consult with appropriate representatives of the private schools [and representatives of parents of parentally-placed private school children with disabilities] on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:

- (1) How parentally placed private school children suspected of having a disability can participate equitably; and
- (2) How parents, teachers, and private school officials will be informed of the process.

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

- (1) The equitable participation of parentally placed private school children; and
- (2) An accurate count of these children.

3. Services plan. Each local school division shall ensure that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part. (34 CFR 300.132(b))

4. Expenditures. [(34 CFR 300.133)]

a. To meet the requirement of the Act, each local school division shall spend the following on providing special education and related services to private school children with disabilities:

(1) For children, aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under §1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children with disabilities in its jurisdiction, aged three to 21; and

(2) For children, aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under §1419 of the Act as the number of privately placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by the school division, is to the total number of children with disabilities in its jurisdiction, aged three to five.

(3) If a local school division has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, the local school division shall obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year. [~~34 CFR 300.133(a)~~]

(4) Local educational agencies may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision. [~~34 CFR 300.133(d)~~]

b. In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, the local school division, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local school division. [~~34 CFR 300.133(b)~~]

c. After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted [by December 1 of each year on a date between October 1 and December 1 of each year as determined by the Superintendent of Public Instruction or designee.]

The child count shall be used to determine the amount that the local school division shall spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year. [~~34 CFR 300.133(c)~~]

d. Expenditures for child find activities, including evaluation and eligibility, described in 8VAC20-81-50 through 8VAC20-81-80, may not be considered in determining whether the local school division has met the expenditure requirements of the Act. [ ~~(34 CFR 300.133(a))~~ ]

e. Local school divisions are not prohibited from providing services to parentally placed private school children with disabilities in excess of those required by this section. [ ~~(34 CFR 300.133(d))~~ ]

5. Consultation.

a. The local school division shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. This includes: (34 CFR 300.134(a), (c), and (d))

(1) How the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(2) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;

(3) The types of services, including direct services and alternate service delivery mechanisms;

(4) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and

(5) How and when those decisions will be made, [including how parents, teachers and private school officials will be informed of the process].

b. If the local school division disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local school division shall provide to the private school officials a written explanation of the reasons why the local school division chose not to provide services directly or through a contract. (34 CFR 300.134(e))

c. Following consultation, the local school division shall obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the local school division shall forward the documentation of the consultation to the Virginia Department of Education. (34 CFR 300.135)

d. A private school official has the right to submit a complaint to the Virginia Department of Education that the local school division: (34 CFR 300.136)

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by the local school division and the appropriate documentation. (34 CFR 300.136)

(1) If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.

(2) The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.

6. Equitable services determined. (34 CFR 300.137)

a. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

b. Decisions about the services that will be provided to the parentally placed private school children with disabilities are made in accordance with the consultation process under subdivision [45] of this subsection and a services plan.

c. The local school division shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

d. The local school division shall:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

7. Services provided. (34 CFR 300.138 and 34 CFR 300.132(b))

a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to these children do not have to meet the requirements for highly qualified special education teachers.

b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each parentally placed private school child with a disability who has been designated to receive services under this subsection shall have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that

the local school division has determined it will make available to private school children with disabilities.

(2) The services plan, to the extent appropriate, shall meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.

e. The services shall be provided:

(1) By employees of a local school division; or

(2) Through contract by the local school division with an individual, association, agency, organization, or other entity.

f. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

8. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law. (34 CFR 300.139(a))

9. Transportation. (34 CFR 300.139(b))

a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability shall be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school or to the child's home depending on the timing of the services.

b. Local school divisions are not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.

10. Procedural safeguards, due process, and complaints. (34 CFR 300.140)

a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that a local school division has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally placed private school children with disabilities.

c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8VAC20-81-200.

d. The dispute resolution options described in subdivisions [ 910 ] b and [ 910 ] c of this subsection apply to the local educational agency in which the private school is located. (34 CFR 300.140(b)(2))

11. Separate classes prohibited. A local school division may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools. (34 CFR 300.143)

12. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school. (34 CFR 300.141)

13. Use of public school personnel. A local school division may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally placed private school children with disabilities and if those services are not normally provided by the private school. (34 CFR 300.142(a))

14. Use of private school personnel. A local school division may use funds available under the Act to pay for the services of an employee of a private school to provide services to a parentally placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control. (34 CFR 300.142(b))

15. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. (34 CFR 300.144)

a. A local school division shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Act for the benefit of parentally placed private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. The local school division shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.

16. Reporting requirements. Each local school division shall maintain in its records, and provide to the Virginia Department of Education, the following information related to parentally placed private school children: (34 CFR 300.132(c))

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

**8VAC20-81-160. Discipline procedures.**

A. General. [~~§22.1-277 of the Code of Virginia; 34 CFR 300.530(a); 34 CFR 300.324(a)(2)(i)~~]

[1.] A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures.

[2. In the event that the child's behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:

a. developing goals and services specific to the child's behavioral needs, or

b. conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child's behavioral needs.]

[3.] School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.

[a. In reviewing the disciplinary incident, school personnel may review the child's IEP and any behavioral intervention plan, and/or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.

b. School personnel may convene an IEP team for this purpose.] [~~§22.1-277 of the Code of Virginia; 34 CFR 300.530(a)~~]

B. Short-term removals.

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10 cumulative school days in a school year. (34 CFR 300.530(b))

a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.

b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C of this section apply.

(1) The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.

(2) These removals only constitute a change in placement if the local educational agency determines there is a pattern.

2. Services during short-term removals.

a. The local educational agency is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed. (34 CFR 300.530(b)(2))

b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations. (34 CFR 300.530(b)(2))

c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC §1412(a)(16)(A))

C. Long-term removals.

1. A long-term removal is for more than 10 consecutive school days; [(34 CFR 300.530; 34 CFR 300.536)] or

2. The child has received a series of short-term removals that constitutes a pattern:

a. Because the removals cumulate to more than 10 school days in a school year;

b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and

c. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

3. The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings. (34 CFR 300.530(a) and (b) and 34 CFR 300.536)

4. On the date on which the decision is made to long-term remove the student because of a violation of a code of student conduct, the local educational agency shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards. (34 CFR 300.530(h))

5. Special circumstances. (34 CFR 300.530(g))

a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:

(1) The child carries a weapon to or possesses a weapon at school [. on school premises,] or [at] a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school [. on school premises,] or [at] a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

[~~B(3)~~]. The child inflicts seriously bodily injury upon another person at school, [on school premises,] or [at] a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.

[~~eb~~]. For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.

6. Services during long-term removals.

a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to: (34 CFR 300.530(d)[~~and 34 CFR 300.531~~])

(1) Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and

(3) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC §1412(a)(16)(A))

c. The IEP team determines the services needed for the child with a disability who has been long-term removed. (34 CFR 300.530(d)(5)[ and 34 CFR 300.531])

D. Manifestation determination. (34 CFR 300.530(c), (e), (f), and (g))

1. Manifestation determination is required if the local educational agency is contemplating a removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.

2. The local educational agency, the parent(s), and relevant members of the child's IEP team, as determined by the parent and the local educational agency, constitute the IEP team that shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made.

3. The IEP team shall review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent(s).

4. The IEP team then shall determine the conduct to be a manifestation of the child's disability:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.

5. If the IEP team determines that the local educational agency failed to implement the child's IEP, the local educational agency shall take immediate steps to remedy those deficiencies.

6. If the IEP team determines that the child's behavior was a manifestation of the child's disability, the IEP team shall:

a. Conduct a functional behavioral assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child; ~~or~~

(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

(2) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B. if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or]

b. If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior; and

c. Return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change in placement as part of the modification of the behavioral

intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C.5. a of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45-day period.

7. If the IEP team determines that the child's behavior was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C 6 a of this section.

E. Appeal. (34 CFR 300.532(a) and (c))

1. If the child's parent(s) disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent(s) may request an expedited due process hearing.

2. A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due process hearing.

3. The local educational agency is responsible for arranging the expedited due process in accordance with the Virginia Department of Education's hearing procedures at 8VAC20-81-210.

a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.

b. The special education hearing officer shall make a determination within 10 school days after the hearing.

c. Unless the parent(s) and the local educational agency agree in writing to waive the resolution meeting, or agree to use the mediation process,

(1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.

d. The decisions on expedited due process hearings are appealable consistent with 8VAC20-81-210.

F. Authority of the special education hearing officer. ~~[(34 CFR 300.532(a) and (b))]~~

1. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is substantially likely to result in injury to self or others.

2. The special education hearing officer under 8VAC20-81-210 may: ~~[(34 CFR 300.532(a) and (b))]~~

a. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of subsections C and D of this section, or that the child's behavior was a manifestation of the child's disability; or

b. Order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.

3. A local educational agency may ask the special education hearing officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others. [ ~~(34 CFR 300.532(b)(3))~~ ]

G. Placement during appeals. (34 CFR 300.533)

1. The child shall remain in the interim alternative educational setting pending the decision of the special education hearing officer, or

2. Until the expiration of the time for the disciplinary period set forth in this section, whichever comes first, unless the parent and the local educational agency agree otherwise.

H. Protection for children not yet eligible for special education and related services. (34 CFR 300.534)

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct of the local educational agency may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

(a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;

(b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or

(c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.

3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has not allowed a previous evaluation of the child or has refused services;  
or

(b) The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.

4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.

a. Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

b. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent(s), the local educational agency shall provide special education and related services as required for a child with a disability who is disciplined.

I. Referral to and action by law enforcement and judicial authorities. (34 CFR 300.535)

1. Nothing in this chapter prohibits a local educational agency from reporting a crime by a child with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.

2. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150).

J. Information on disciplinary actions. (34 CFR 300.229)

1. The Virginia Department of Education requires that local educational agencies include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child.

2. Local educational agencies are responsible for transmitting the statement to the Virginia Department of Education upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.

3. The statement may include:

a. A description of any behavior engaged in by the child who required disciplinary action;

- b. A description of the disciplinary action; and
  - c. Any other information that is relevant to the safety of the child and other individuals involved with the child.
4. If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

**8VAC20-81-170. Procedural safeguards.**

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent(s) of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.

(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that the parent(s) of a child with a disability has the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the parent(s) of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) Inform the parent(s) that at their discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;

(c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) Inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Each local educational agency shall ensure that a parent(s) of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent(s) if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 c. (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The parent(s) of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent(s) of a child with a disability, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense. (34 CFR 300.502[ ~~(a)~~ ] (b) and (e))

a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by the local educational agency.

b. If the parent(s) requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.

c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.

d. If the parent(s) requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))

a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding [the provision of] a free appropriate public education ~~[for to]~~ the child; and

b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.

4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d))

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the parent(s) of a child with a disability within a reasonable time before the local educational agency: (34 CFR 300.503(a))

- a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or
- b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2. The notice shall include: (34 CFR 300.503(b))

- a. A description of the action proposed or refused by the local educational agency;
- b. An explanation of why the local educational agency proposes or refuses to take the action;
- c. A description of any other options the IEP team considered and the reasons for the rejection of those options;
- d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;
- e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;
- f. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- g. Sources for the parent(s) to contact in order to obtain assistance in understanding the provisions of this section.

3. a. The notice shall be: (i) written in language understandable to the general public; and (ii) provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the parent(s) is not a written language, the local educational agency shall take steps to ensure that:

- (1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;
- (2) The parent(s) understand the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504[and 34 CFR 300.508(e)(1)])

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability shall be given to the parent(s) by the local educational agency only one time a school year, except that a copy shall be given to the parent(s) upon:

- a. Initial referral for or parent request for evaluation;
- b. If the parent requests an additional copy;
- c. Receipt of the first state complaint during a school year;
- d. Receipt of the first request for a due process hearing during a school year; and
- e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement [because of a violation of a code of student conduct].

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but the local educational agency does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. The local educational agency shall offer the parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision 1.

3. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:

- a. Independent educational evaluation;
- b. Prior written notice;
- c. Parental consent;
- d. Access to educational records;
- e. Opportunity to present and resolve complaints through the due process procedures;
- f. The availability of mediation;
- g. The child's placement during pendency of due process proceedings;
- h. Procedures for students who are subject to placement in an interim alternative educational setting;
- i. Requirements for unilateral placement by parents of children in private schools at public expense;
- j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- k. Civil actions, including the time period in which to file those actions;
- l. Attorneys' fees; and
- m. The opportunity to present and resolve complaints through the state complaint procedures, including:

- (1) The time period in which to file a complaint;
  - (2) The opportunity for the local educational agency to resolve the complaint; and
  - (3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.
4. The notice required under this subsection shall meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

- a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))
- b. An initial eligibility determination or any change in categorical identification;
- c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))
- d. Any revision to the child's IEP services, ~~[except as outlined in subdivision 2 f of this subsection];~~
- e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;
- f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;
- ~~[eg]. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)~~
- ~~[fh]. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))~~

2. Parental consent not required. Parental consent is not required before:

- a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))
- b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent(s) of all children; (34 CFR 300.300(d)(1))
- c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)
- d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals [and is included in the child's IEP];

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

~~[f. Any partial or complete termination of special education and related services;]~~~~[g].~~ Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if: (34 CFR 300.300(a)(2))

(1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent(s);

(2) The parent's rights have been terminated; or

(3) The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has ~~[consent]~~consented to the initial evaluation.

~~[h. The local educational agency provides a free appropriate public education to children with disabilities who transfer public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120. (34 CFR 300.323(e) and (f))]~~<sup>3</sup>. Revoking consent. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.

#### 4. Refusing consent.

a. If the parent(s) refuses consent for initial evaluation or a reevaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. If the parent(s) refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3) and (4))

(1) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(2) The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

c. If the parent(s) of a parentally-placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency: (34 CFR 300.300(d)(4))

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.

d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. (34 CFR 300.300(d)(3))

5. Withholding consent.

a. If the parent(s) fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond. (34 CFR 300.300(c)(2))

c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))

7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))

8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence [written, electronic, or facsimile] sent to the parent(s) and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational agency using private

insurance to pay for services required under this chapter, shall provide notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. The local educational agency shall permit the parent(s) to inspect and review any education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been [advised—provided a copy of a judicial order or decree, or other legally-binding documentation], that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)

3. Record on more than one child. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)

4. List of types and locations of information. Each local educational agency shall provide a parent(s) on request a list of the types and locations of education records collected, maintained, or used by the local educational agency. (34 CFR 300.616)

5. Fees. (34 CFR 300.617)

a. Each local educational agency may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

[c. A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E.7.]

6. Amendment of records at parent's request. (34 CFR 300.618)

a. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.

b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7 of this subsection.

7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR 300.619)

8. Results of hearing. (34 CFR 300.620)

a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC §1232g; 34 CFR 300.621)

[a. The local educational agency may:

(1) develop local procedures for such a hearing process; or

(2) obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.]

10. Consent. (34 CFR 300.32; 34 CFR 300.622)

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC §1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent(s) resides.

11. Safeguards. (34 CFR 300.623)

a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

[b. Each local educational agency shall ensure that electronic communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.]

~~[bc]~~. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

~~[ed]~~. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.

[de]. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. (34 CFR 300.624)

a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

H. Electronic mail. If the local educational agency makes the option available, parent(s) of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)

I. Electronic signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. (Chapter 42.1 (§59.1-479 et seq.) of Title 59.1 of the Code of Virginia; 34 CFR 300.9)

J. Audio and Video Recording.

1. The local educational agency shall permit the use of audio recording devices at meetings convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or revise the child's IEP under 8VAC20-81-110 F. and to review discipline matters under 8VAC20-81-160 D. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent(s) shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes a part of the child's educational record.

2. The local educational agency may have policies that prohibit, limit, or otherwise regulate the use of:

a. video recording devices at meetings convened pursuant to this chapter; or

b. audio or video recording devices at meetings other than those meetings identified in subdivision 1 of this subsection.

3. These policies shall:

- a. stipulate that the recordings become part of the child's educational record;
- b. ensure that the policy is uniformly applied; and
- c. if the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter. ]

**8VAC20-81-180. Transfer of rights to students who reach the age of majority.**

A. All rights accorded to the parent(s) under the Act transfer to the student upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution. (34 CFR 300.520)

B. Notification.

1. The local educational agency shall notify the parent(s) and the student of the following: (34 CFR 300.520)
  - a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and
  - b. That procedures exist for appointing the parent(s) or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection C of this section.
2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student [and parent(s) has–have] been informed of the rights that will transfer to the student on reaching the age of 18. (34 CFR 300.320(c))
3. The local educational agency shall provide any further notices required under the Act to both the student and the parent(s).
4. The local educational agency may continue to invite the parent(s), as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.
5. The adult student may invite the student's parent(s) to participate in meetings where decisions are being made regarding the student's educational program.

C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Act shall transfer to the adult student, unless one of the following actions has been taken:

1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
2. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;
3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures: (34 CFR 300.520(b))
  - a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:
    - (1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.
    - (2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the ~~Virginia~~ Supreme Court of Virginia ; or (v) a court-appointed special advocate for the adult student.
  - b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.
  - c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:
    - (1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent shall be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of local educational agencies. Challenges shall be provided in writing to the local educational agency's administrator of special education who then shall notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or

4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with mental retardation in accordance with §37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

D. If the local educational agency receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this

section, the local educational agency shall designate the parent(s) of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

1. If the parent(s) or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:
  - a. An adult brother or sister;
  - b. An adult aunt or uncle; or
  - c. A grandparent.
2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

**8VAC20-81-190. Mediation.**

A. Each local educational agency shall ensure that the parent(s) of a child with a disability are informed of the option of mediation to resolve disputes involving any matter arising under Part B of the Act, including the identification, evaluation ~~[of the child]~~, or educational placement and services of the child, ~~[or]~~ the provision of a free appropriate public education to the child, ~~[including and]~~ matters arising prior to the filing of a state complaint or request for a due process hearing. Mediation is available to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent. (§22.1-214 B of the Code of Virginia; 34 CFR 300.506(a))

B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is: (§22.1-214 B of the Code of Virginia; 34 CFR 300.506(b)(1))

1. Voluntary on the part of both the local educational agency and parent;
2. Not used to deny or delay a parent's(s') right to a due process hearing or to deny any other rights afforded under the Act; and
3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

C. The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training

and information center or community parent resource center in Virginia established under §1471 or 1472 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))

D. In accordance with the Virginia Department of Education's procedures: (34 CFR 300.506(b)(3) and (4))

1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;
2. The mediator is chosen on a rotation basis; and
3. The Virginia Department of Education bears the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall: (34 CFR 300.506(b)(5) [ , ~~(b)(6)~~, and ~~(b)(7)~~ through (b)(8) ]

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;
2. Conclude with a written legally binding agreement, if an agreement is reached by the parties to the dispute, that:
  - a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
  - b. Is signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and
  - c. Is enforceable in any state or federal court of competent jurisdiction.
3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator: (34 CFR 300.506[(c)])

1. May not be an employee of any local educational agency or the Virginia Department of Education if ~~[the Virginia Department of Education - it]~~ is providing direct services to a child who is the subject of the mediation process;
2. Shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and
3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

**8VAC20-81-200. Complaint resolution procedures.**

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system. (34 CFR 300.151)

B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall: (~~34 CFR 300.151 and~~ 34 CFR 300.153)

1. Be in writing;
2. Include the signature and contact information for the complainant;
3. Contain a statement that a local educational agency has violated the Act or these special education regulations;
4. Include the facts upon which the complaint is based;
5. If alleging violations with respect to a specific child, include:
  - a. The name and address of the residence of the child;
  - b. The name of the school the child is attending;
  - c. In the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;
  - d. A description of the nature of the problem of the child, including facts relating to the problem; and
  - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
6. Address an action that occurred not more than one year prior to the date the complaint is received;
7. Contain all relevant documents; and
8. Be provided simultaneously to the local educational agency or public agency serving the child.

C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and the local educational agency in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.

D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an investigation to determine whether the local educational agency is in compliance with applicable law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.

a. The notification sent to the local educational agency shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;

(4) Notification of the opportunity for the parties to engage voluntarily in mediation;

(5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:

(a) Written documentation that the complaint has been resolved; or

(b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the parent(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.

b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay ~~[completing completion of]~~ the investigation within ~~[the 60-day regulatory timeline 60 calendar days]~~.

c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.

2. If a reply from the local educational agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a

second notice to the local educational agency advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.

c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.

4. During the course of the investigation, the Virginia Department of Education shall:

a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.

b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.

(1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.

(2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.

(3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.

d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:

- (1) Technical assistance activities;
- (2) Negotiations; and
- (3) Corrective actions to achieve compliance.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the local educational agency to bring it into compliance with applicable timelines.

5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.

F. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

G. If the local educational agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§22.1-214 E of the Code of Virginia)

I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. (34 CFR 300.151)

**8VAC20-81-210. Due process hearing.**

A. The Virginia Department of Education [ ~~administers a~~ provides for an impartial ] special education due process hearing system to resolve disputes between parents and local educational agencies [ ~~regarding the~~ with respect to any matter relating to the]: (§22.1-214 of the Code of Virginia; 34 CFR §300.121 and 34 CFR §300.507 through 34 CFR §300.518)

1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;
2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
3. Educational placement and services of the child; and
4. Provision of a free appropriate public education to the child.

B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.

C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.

D. The Virginia Department of Education establishes procedures for:

1. Providing Special Education Hearing Officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.
2. Establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases.

a. The Virginia Department of Education shall review annually its current list of Special Education Hearing Officers and determine the recertification status of each hearing officer.

b. Notwithstanding anything to the contrary in this subdivision, individuals on the Special Education Hearing Officers list on the effective date of this regulation shall be subject to the Virginia Department of Education's review of recertification status based on past and current performance.

c. The ineligibility of a Special Education Hearing Officer continuing to serve in this capacity shall be based on the factors listed in subdivision 3.c. of this subsection.

3. Evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers:

a. The Virginia Department of Education shall establish procedures for evaluating Special Education Hearing Officers.

b. The first review of the recertification status of each Special Education Hearing Officer will be conducted within a reasonable time following the effective date of these regulations.

c. In considering whether a Special Education Hearing Officer will be certified or re-certified, the Virginia Department of Education shall determine the number of hearing officers needed to hear special education due process cases, and consider matters related to the Special Education Hearing Officer's adherence to the factors in subdivision H.5. of this section, as well as factors involving the Special Education hearing Officer's:

(1) Issuing an untimely decision, or failing to render decision within regulatory time frames;

(2) Unprofessional demeanor;

(3) Inability to conduct an orderly hearing;

(4) Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;

(5) Improper ex parte contacts;

(6) Violations of due process requirements;

(7) Mental or physical incapacity;

(8) Unjustified refusal to accept assignments;

(9) Failure to complete training requirements as outlined by the Virginia Department of Education;

(10) Professional disciplinary action;

(11) Issuing a decision that contains:

(a) inaccurate appeal rights of the parents, or

(b) no controlling case or statutory authority to support the findings.

d. When a Special Education Hearing Officer has been denied certification or recertification based on the factors in subdivision 3.c. of this section, the Virginia Department of Education shall notify the special Education Hearing Officer and the Office of the Executive Secretary of the Supreme Court of Virginia that the hearing officer is no longer certified to serve as a Special Education Hearing Officer.

(1) Upon notification of denial of certification or recertification, the hearing officer may, within 10 calendar days of the postmark of the letter of notification, request of the Superintendent of Public Instruction, or his designee, reconsideration of the decision. Such request shall be in writing and

shall contain any additional information desired for consideration. The Superintendent of Public Instruction, or his designee, shall render a decision within 10 calendar days of receipt of the request for reconsideration. The Virginia Department of Education shall notify hearing officer and Office of the Executive Secretary of the Supreme Court of Virginia of its decision.

~~In administering the special education due process hearing system, the Virginia Department of Education establishes procedures for:~~

~~1. Recruitment, selection, and appointment of special education hearing officers. All special education hearing officers shall possess the following minimum qualifications for appointment to the special education hearing officers' list:~~

- ~~a. Active membership in good standing in the Virginia State Bar;~~
- ~~b. Active practice of law for at least five years. In order to satisfy this requirement, the applicant shall have completed five years of active practice of law with two of these years in Virginia. For purposes of this section, the active practice of law exists when, on a regular and systematic basis, in the relation of attorney and client, one furnishes to another advice or service under circumstances that imply his possession and use of legal knowledge and skill. If not presently engaged in the active practice of law, the applicant shall, in addition to the requirements of this section, have previously served as a hearing officer, administrative law judge, or possess extensive prior experience with administrative hearings;~~
- ~~c. Demonstrated knowledge of federal and state laws and regulations regarding special education;~~
- ~~d. Prior experience with administrative hearings or knowledge of administrative law;~~
- ~~e. Demonstrated legal writing ability;~~
- ~~f. Willingness to travel to any area of the state to conduct hearings; and~~
- ~~g. Completion of training programs, as required by the Virginia Department of Education.~~

~~2. Providing special education hearing officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.~~

~~3. Evaluation, continued eligibility, and disqualification requirements of special education hearing officers.~~

- ~~a. In considering whether a special education hearing officer will be removed from the list of eligible special education hearing officers, the Virginia Department of Education shall consider allegations of:  
(1) Continuous pattern of untimely decisions, or failure to render decision within regulatory time frames;  
(2) Unprofessional demeanor;~~

~~(3) Inability to conduct orderly hearings;~~

~~(4) Inability to conduct hearing in conformity with the federal and state laws and regulations regarding special education;~~

~~(5) Improper ex parte contacts;~~

~~(6) Violations of due process requirements;~~

~~(7) Mental or physical incapacity;~~

~~(8) Unjustified refusal to accept assignments;~~

~~(9) Failure to complete training requirements as outlined by the Virginia Department of Education; or~~

~~(10) Professional disciplinary action.~~

~~b. When one or more of the allegations outlined in subdivision 3 a of this subsection have been established by the Virginia Department of Education, the special education hearing officer may be removed from the Virginia Department of Education's list of special education hearing officers.~~

~~c. A special education hearing officer may be disqualified for a specific case.~~

~~(1) A special education hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by applicable rules governing the practice of law in Virginia.~~

~~(2) Any party may request disqualification of a special education hearing officer by filing an affidavit with the Virginia Department of Education prior to taking evidence at a due process hearing.~~

~~(a) The affidavit shall state, with particularity, the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.~~

~~(b) The special education hearing officer shall provide a response no less than 10 calendar days prior to the due process hearing. No oral hearing is permitted.~~

~~(c) The filing of such an affidavit shall not stay the proceedings or filing requirements in any way except the due process hearing may not be held.~~

~~(d) If the Virginia Department of Education determines that the special education hearing officer is not disqualified, the due process hearing shall proceed as scheduled.~~

~~(e) If the special education hearing officer is disqualified, the Virginia Department of Education shall appoint a new special education hearing officer so that the hearing can proceed as scheduled whenever possible.]~~

4. Reviewing and analyzing the decisions of special education hearing officers, and the requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.

[~~GE~~]. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507 [~~(b)(a)~~] and 34 CFR 300.511(e) and (f))

a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or

b. The local educational agency withheld information that it was required to provide under the IDEA.

2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a local educational agency may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))

3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)

a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or

b. Any decision regarding placement under the disciplinary procedures.

4. In circumstances involving disciplinary actions, the local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)

[~~DF~~]. Procedure for requesting a due process hearing. (34 CFR 300.504(a)(2), 34 CFR 300.507, 34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing [~~to the local educational agency and to~~] the Virginia Department of Education. [ A copy of that request shall be delivered contemporaneously by the requesting party to the other party. ]

a. If the local educational agency initiates the due process hearing, the local educational agency shall advise the parent(s) and the Virginia Department of Education in writing of this action.

b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and

forward a copy of the request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

a. The name of the child;

b. The address of the residence of the child (or available contact information in the case of a homeless child);

c. The name of the school the child is attending;

d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the special education hearing officer within 15 calendar days of receipt of the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.

5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.

6. ~~[The party requesting the due process hearing shall not be allowed~~ The special education hearing officer has the discretionary authority to permit either party to raise issues at the ~~[due process ]~~hearing that were not raised in the notice ~~[filed as described in subdivision 2 of this subsection by the party requesting the due process hearing in light of particular facts and circumstances of the case.~~

~~If the local educational agency is not the initiating party to the due process hearing proceeding, the special education hearing officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s)' request for due process in light of particular facts and circumstances of the case.]~~

7. The local educational agency shall upon receipt of a request for a due process hearing, inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal

and other relevant services available in the area. The local educational agency also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

[~~EG~~]. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:
  - a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting;[or]
  - b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.
2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

[~~FH~~]. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:
  - a. The local educational agency shall contact the [~~Virginia Department of Education~~ Supreme Court of Virginia] for the appointment of the special education hearing officer.
  - b. The [~~Virginia Department of Education~~ local educational agency] contacts the special education hearing officer to confirm availability, and upon acceptance, [~~notifies the local educational agency of the appointment.~~
  - c. [~~The local educational agency~~] notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.
2. Upon request, the Virginia Department of Education shall share information on the qualifications of the special education hearing officer with the parent(s) and the local educational agency.
3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.
  - a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an objection with the Virginia Department of Education. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.
  - b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the [~~Virginia Department~~

~~of Education~~ Supreme Court of Virginia] issues a decision on the request in accordance with the ~~Virginia Department of Education's~~ procedures.

c. If a special education hearing officer recuses himself or is otherwise disqualified, the ~~Virginia Department of Education~~ Supreme Court of Virginia shall ensures ensure ] that another special education hearing officer is promptly appointed.

4. A hearing shall not be conducted by a person who:

a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;

b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer.

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. A special education hearing officer shall:

a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

[~~G~~]. Duration of the special education hearing officer's authority.

1. The special education hearing officer's authority begins with acceptance of the case assignment.

2. The special education hearing officer has authority over a due process proceeding until:

a. Issuance of the special education hearing officer's decision; [or]

b. The ~~Virginia Department of Education~~ Supreme Court of Virginia] revokes such authority by removing or disqualifying the special education hearing officer.

[~~H~~]. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR 300.533)

1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise;

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;

3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;
4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;
5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or
6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

[K]. Rights of parties in the hearing. (§22.1-214 C of the Code of Virginia; 34 CFR 300.512)

1. Any party to a hearing has the right to:
  - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
  - b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;
  - c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
  - d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and
  - e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.
2. Additional disclosure of information shall be given as follows:
  - a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and
  - b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
3. Parental rights at hearings.
  - a. A parent(s) involved in a hearing shall be given the right to:
    - (1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), [even though the applicable appeal period has expired].

~~[J]~~. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)

1. Maintain and monitor the due process hearing system and establish procedures for its operation;
2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;
3. Develop and disseminate a model form to be used by the parent(s) to give notice in accordance with the contents of the notice listed in subdivision ~~[G-2 F 2]~~ of this section;
4. Maintain and ensure that each local educational agency maintains a list of persons who serve as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;
5. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information; and
- [6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated.]

~~[67]~~. Ensure that noncompliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

~~[K]~~~~[M]~~. Responsibilities of the parent. In a due process hearing, the parent(s) shall: (34 CFR 300.512)

1. Decide whether the hearing will be open to the public;
2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;
3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
4. Provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the special education hearing officer.

~~[L]~~~~[N]~~. Responsibilities of the local educational agency. The local educational agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)

1. Maintain a list of the persons serving as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;

2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;
3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s)' first request for a due process hearing in a school year;
4. Inform the parent(s) at the time the request is made of the availability of mediation;
5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;
6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;
7. Make timely and necessary responses to the special education hearing officer;
8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of [the a fair and impartial] hearing;
10. Provide documents and exhibits necessary for the hearing within required timelines;
11. Comply with timelines, orders, and requests of the special education hearing officer;
12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;
13. Forward all necessary communications to the Virginia Department of Education and parties as required;
14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the parent(s) or the local educational agency;
15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed; and
16. [Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s) within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.
  - a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.
  - b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.

c. The implementation plan:

(1) must be based upon the decision of the hearing officer.

(2) shall include the revised IEP if the decision affects the child's educational program.

(3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.]

17. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.

[M.O.] Responsibilities of the special education hearing officer. The special education hearing officer shall: ( [ ~~34 CFR 300.515~~, 34 CFR 300.511 through 34 CFR 300.513; and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing;

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The special education hearing officer shall send copies of correspondence to the parties or their attorneys;

3. Conduct a prehearing conference via a telephone conference call or in person unless the special education hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;

4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference;

5. At the prehearing stage:

a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case; and

[b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute].

- [~~bc~~]. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court;
6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;
  7. Ascertain from the parent(s) whether the hearing will be open to the public;
  8. Ensure that the parties have the right to a written or, at the option of the parent(s), an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision;
  9. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing;
  10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8VAC20-81-220 when the parent(s) or guardian is not available or cannot be located;
  11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing;
  12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request;
  13. Base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations;
  14. Report findings of fact and decisions in writing to the parties [~~but if a party is represented by an attorney, then to their attorney~~ and their attorneys] and the Virginia Department of Education. If the hearing is an expedited hearing, the special education hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held;
  15. Include in the written findings:
    - a. Findings of fact relevant to the issues that are determinative of the case;
    - b. Legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;
    - c. An explanation of the basis for the decision for each issue that is determinative of the case; and
    - d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision;

16. Subject to the procedural determinations described in subdivision O17 of this subsection, the decision made by a special education hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education;

17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

- a. Impeded the child's right to a free appropriate public education;
- b. Significantly impeded the parent's(s') opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
- c. Caused a deprivation of educational benefits.

Nothing in this subdivision shall be construed to preclude a special education hearing officer from ordering a local educational agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536;

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case [ .; ~~and~~]

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

[~~NP~~]. Authority of the special education hearing officer. The special education hearing officer has the authority to: (§22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;
2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;
3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:
  - a. The special education hearing officer shall rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.
  - b. The special education hearing officer [or a party] may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

- c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;
4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;
5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;
6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;
7. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the special education hearing officer determines that the best interests of the child will be served;
8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8VAC20-81-170;
9. a. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education.
- b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension;
10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;
11. Set guidelines regarding media coverage if the hearing is open to the public;
12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and
13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation

determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

b. Unless the parents and [~~LEA~~ local educational agency] agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.

c. Once a determination is made, the special education hearing officer may:

(1) Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

[~~EQ~~]. Timelines for nonexpedited due process hearings. (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.

a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:

(1) Includes a representative of the local educational agency who has decision making authority on behalf of the local educational agency; and

(2) May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.

b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process request.

c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:

(1) The parent and the local educational agency agree in writing to waive the meeting; or

(2) The parent and the local educational agency agree to use the mediation process described in this chapter.

d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.

[e. The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting.]

2. Resolution period.

a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.

b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.

c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.

d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented [~~as required to gain parental consent~~ in accordance with the provision in 8VAC20-81-110 E.4.]), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.

e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or

- c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.
  4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:
    - a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and
    - b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.
  5. Agreement review period. If the parties execute an agreement pursuant to subdivision [ 43 ] of this subsection, a party may void the agreement within three business days of the agreement's execution.
  6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision [43] of this subsection:
    - a. A final decision is reached in the hearing; and
    - b. A copy of the decision is mailed to each of the parties.
  7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.
  8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.
  9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.
- [PR]. Timelines for expedited due process hearings. (34 CFR 300.532(c))
1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.
  2. Unless the parents and [~~LEA~~ local educational agency] agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:
    - a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint; and

b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

[c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.]

3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

[QS]. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)

1. The costs of an independent educational evaluation [ordered by the special education hearing officer], special education hearing officer, court reporters, and transcripts ~~[that are incidental to the hearing]~~ are shared equally by the local educational agency and the Virginia Department of Education. ~~[Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.]~~

2. The local educational agency is responsible for its own attorneys' fees.

3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.

4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.

5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8VAC20-81-310.

[RT]. Right of appeal. (34 CFR 300.516)

1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under §1415 of the Act without regard to the amount in controversy.

2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.

3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is

appropriate in accordance with subsection [ ~~GJ~~ ] of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.

4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200. [SU]. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

**8VAC20-81-220. Surrogate parent procedures.**

A. Role of surrogate parent. The surrogate parent appointed in accordance with this section represents the child in all matters relating to the identification, evaluation, or educational placement of the child; or the provision of a free appropriate public education to the child. (34 CFR 300.519(g))

B. Appointment of surrogate parents.

1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

- a. The ~~biological~~ parent(s) or guardians are allowing relatives or private individuals to act as a parent;
- b. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with §16.1-283, 16.1-277.01, or 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent of the child for the purposes of any special education proceedings; or
- c. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with §63.2-908 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

2. Unless one of the exceptions outlined in subdivision B.1. of this section applies, The—the local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: (34 CFR 300.519(a))

- a. No parent, as defined in 8VAC20-81-10, can be identified;
- b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent;
- c. The child is a ward of the state [and either subdivision 1.a. or 1.b. of this subsection is also met]; or

d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia [and either subdivision 1.a. or 1.b. of this subsection is met.]

3. The local educational agency shall appoint a surrogate parent as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8VAC20-81-180 C 3 or C 4 and no family member is available to serve as the child's educational representative.

4. If the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child. The appointed surrogate shall meet the requirements of subdivision ~~[ D-4-eE 1 c]~~ of this section. (34 CFR 300.519(c))

[C. Procedures for surrogate parents.]

~~[51]~~. The local educational agency shall establish procedures [in accordance with the requirements of this chapter], for determining whether a child needs a surrogate parent. (34 CFR 300.519(b))

~~[62]~~. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee within 30 calendar days of the determination that a surrogate parent is necessary. (34 CFR 300.519(b) and (h))

a. The appointment having been effected, the local educational agency shall notify in writing:

- (1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
- (2) The surrogate parent-appointee; and
- (3) The person charged with responsibility for the child.

b. The surrogate parent serves for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.

c. If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.

d. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.

~~[73]~~. Each local educational agency shall establish procedures that include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

- a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8VAC20-81-180;
- b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;
- c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
- d. The parent(s), whose whereabouts were previously unknown, are now known and available; or
- e. The appointed surrogate parent is no longer eligible according to subsection [ ~~DE~~ ] of this section.

[~~ED~~]. Identification and recruitment of surrogate parents.

1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.
2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate eligibility. Other factors that warrant the local educational agency's attention include:
  - a. Consideration of the appointment of a relative to serve as surrogate parent;
  - b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately; [ and ]
  - c. [~~Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and~~
  - d. ]The appropriateness of the child's participation in the selection of the surrogate parent.

[~~DE~~]. Qualifications of surrogate parents. (34 CFR 300.519(d), (e), and (f))

1. The local educational agency shall ensure that a person appointed as a surrogate:
  - a. Has no personal or professional interest that conflicts with the interest of the child;
  - b. Has knowledge and skills that ensure adequate representation of the child;
  - c. Is not an employee of the Virginia Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child; and
  - d. Is of the age of majority.
2. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

3. If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate shall otherwise meet the qualifications of a surrogate, and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.

[EE]. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter. (34 CFR 300.519(g)).

**8VAC20-81-230. Local educational agency administration and governance.**

A. The local educational agency shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.

B. Plans, applications, and reports. (§22.1-215 of the Code of Virginia; 34 CFR 300.200 and 34 CFR 300.212)

1. The local educational agency shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:

- a. Assurances that the local educational agency has in effect policies and procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;
- b. A report indicating the extent to which the annual plan for the preceding period has been implemented;
- c. Budgets outlining the use of the federal funds; and
- d. ~~[A copy of~~ Any revisions to the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision G 2 of this section.

2. Prior to submission to the Virginia Department of Education, the annual plan shall be reviewed by the local school division's local advisory committee, and approved by the local school board. State-operated programs [and] the Virginia School for the Deaf and Blind at Staunton~~[,] and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton]~~ shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.

3. The local educational agency shall ensure that the annual plan, and all required special education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.

C. Provision of or payment for special education and related services. (34 CFR 300.154(b))

1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.

2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21 of 8VAC20-81-20.

D. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent.

1. Membership.

a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.

b. ~~The committee shall include one teacher. The committee shall include representation of gender and the ethnic population of the local school division.~~

c. Additional local school division personnel shall serve only as consultants to the committee.

2. The functions of the local advisory committee shall be as follows:

a. Advise the local school division of needs in the education of children with disabilities;

b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;

d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;

e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and

f. Participate in the review of the local school division's annual plan, as outlined in subdivision B 2 of this section.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

4. Committee meetings shall be held at least four times in a school year and shall be open to the public.

E. Regional special education programs. (§22.1-218 of the Code of Virginia; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.

2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.

F. Transition from infant and toddler programs to early childhood special education programs. (34 CFR 300.124)

1. Children who are participating in early intervention programs under Part C of the Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with §1437(a)(9) of the Act, and its federal implementing regulations. ~~34 CFR 303.148(b).~~

3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:

a. The child meets the Part B eligibility criteria; and

b. An IEP has been developed and signed by the parent(s).

G. Programs for children with disabilities in regional or local jails. (~~34 CFR 300.121 and 34 CFR 300.122~~ 34 CFR 300.101 and 34 CFR 300.102)

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.

2. Each local school division with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of [any revisions to] this agreement shall be submitted with the annual plan specified in subsection B of this section. [ ~~(34 CFR 300.121 and 34 CFR 300.122)~~ ]

H. Each local educational agency shall cooperate with the U.S. Department of Education's efforts under §1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)

I. Early Intervening Services. Each local educational agency shall implement early intervening services in accordance with the provisions of 8VAC20-81-260 H. (34 CFR 300.226)

J. Access to instructional materials.

1. Each local educational agency shall ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))

2. To meet the requirements of subdivision 1 of this subsection for blind persons or other persons with print disabilities, the local educational agency may coordinate with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))

a. The local educational agency shall provide an assurance to the Virginia Department of Education that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.

b. Each local educational agency shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.

c. If the local educational agency coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

d. The requirements of subdivision J 2 c of this section shall apply to print instructional materials published after July 19, 2006.

3. Nothing in this subsection relieves a local educational agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))

4. Definitions applicable to this subsection.

a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.

b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2 USC §135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))

(1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;

(2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;

(3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or

(4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

c. The term "competent authority" is defined as follows: (2 USC §135a; 36 CFR 701.6(b)(2))

(1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.

d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or the local educational agency for use by students in the classroom. (20 USC §1474(e)(3)(C))

e. The term "specialized formats" has the meaning given the term in 17 USC §121(d)(3), and means Braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC §1474(e)(3)(D); [34 CFR 300.172(e)])

## **Part IV Funding**

### ***8VAC20-81-240. Eligibility for funding.***

A. Each local school division and state-operated program shall maintain current policies and procedures and supporting documentation to demonstrate compliance with the Act and the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures shall be made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance. ([34 CFR 300.201]; 34 CFR 300.220)

B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

### ***8VAC20-81-250. State funds for local school divisions.***

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education

teachers and paraprofessionals required by the Standards of Quality. (Chapter 13.2 (§22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia)

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement is made in the year following delivery of instruction. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

C. Children with disabilities enrolled in regional special education programs: (Virginia Appropriations Act; §§22.1-211 and ] 22.1-218 of the Code of Virginia)

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the [~~Virginia Board of Education~~ Superintendent of Public Instruction or designee].

2. Such reimbursement shall be in lieu of [~~the state per pupil basic aid otherwise~~ other state education funding] available for each child ] .

D. Applicability of least restrictive environment and FAPE provision in state-funded placements. No state-funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise result in a failure to provide a child with a disability a free appropriate public education. (34 CFR 300.114(b))

E. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions are reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails. (Virginia Appropriation Act)

F. Funds under the Comprehensive Services Act for At-Risk Youth and Families. (§§2.2-5211 through 2.2-5212 of the Code of Virginia)

1. Funds are available under the Comprehensive Services Act to support the cost of:

- a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;
- b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and
- c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a special education hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

G. Reimbursement shall be made for the education of children with disabilities who: (§22.1-101.1 B and C of the Code of Virginia)

1. Have been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency;

2. Have been placed in an orphanage or children's home, which exercises legal rights; or

3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child-caring institution or group home licensed in accordance with the Code of Virginia.

**8VAC20-81-260. Federal funds.**

A. In accordance with the provisions of the Act, the Virginia Department of Education disburses the federal funds that are available under Part B of the Act to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. The local educational agency shall submit an annual plan to the Virginia Department of Education describing the use of such funds in accordance with subsection B of 8VAC20-81-230. (34 CFR 300.200; 34 CFR 76.301)

B. Excess costs means those costs that are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student as may be appropriate, and that shall be computed after deducting [(34 CFR 300.16, 34 CFR 300.202 and Appendix A)] :

1. Amounts received under Part B of the Act;

2. Amounts received under Part A of Title I of the ESEA;

3. Amounts received under Parts A and B of Title III of the ESEA; or

4. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1, 2, or 3 of this subsection but excluding any amounts for capital outlay and debt service.

A local educational agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities in state and local funds before funds under Part B of the Act are used. (See 34 CFR Part 300, Appendix A for an example of how excess costs shall be calculated.) [ ~~(34 CFR 300.16, 34 CFR 300.202 and Appendix A)~~ ]

C. A local educational agency complies with the maintenance of effort requirement in establishing its eligibility for an award in a fiscal year if the local educational agency budgets the same total or per capita amount in state and local funds as it spent from the same sources to educate children with disabilities in the most recent prior year for which information is available. (34 CFR 300.203)

D. Part B funds may be used to supplement, but shall not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Act. (34 CFR 300.202 [ ~~, 34 CFR 300.203 and through~~ ] 34 CFR 300.204)

E. The amount of Part B funds determined to be available for each local educational agency is based upon the formulas specified under the Act. (34 CFR 300.705 and 34 CFR 300.816)

F. A local educational agency may use Part B funds to implement a schoolwide program under §1114 of the ESEA, except that the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency shall ensure that all children with disabilities in schoolwide program schools: (34 CFR 300.206)

1. Receive services in accordance with a properly developed IEP; and
2. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

G. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child. (34 CFR 300.208)

H. Early intervening services. (34 CFR 300.226 and 34 CFR 300.646)

1. Children who are not currently identified as needing special education or related services may need additional academic and behavioral supports to succeed in a general education environment. These

supports may be in the form of early intervening services. Early intervening services apply to children in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three.

2. To develop and implement coordinated, early intervening services, which may include interagency financing structures, a local school division may not use more than 15% of the amount the school division receives under Part B of the Act for any fiscal year. The 15% is less any amount reduced by the local school division pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds).

3. In implementing coordinated, early intervening services under this section, a local educational agency may carry out activities that include:

- a. Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

4. Nothing in this section shall be construed to either limit or create a right to a free appropriate public education under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

5. Each [LEA local educational agency] that develops and maintains coordinated, early intervening services under this section shall annually report to the Virginia Department of Education on:

- a. The number of children served under this section who received early intervening services; and
- b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

6. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

7. The amount of funds expended by a local educational agency for early intervening services shall count toward the maximum amount of expenditures that the [LEA local educational agency] may reduce when determining compliance with the requirement for maintenance of effort.

8. If the Virginia Department of Education determines significant disproportionality based on race and ethnicity is occurring in a local educational agency in the identification of children with disabilities, or

the placement of identified children in a particular educational setting, the local educational agency shall:

- a. Use 15% of its Part B funds to provide comprehensive coordinated early intervening services particularly, but not exclusively, to those groups that were significantly overidentified; and
- b. Publicly report on the revision of policies, practices, and procedures used in the identification and placement of children with disabilities.

I. If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Act that are not needed by the school division to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve. (34 CFR 300.705 and 34 CFR 300.817)

***8VAC20-81-270. Funds to assist with the education of children with disabilities residing in state-operated programs.***

A. State mental health facilities. State funds for education for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

B. State training centers for [~~the mentally retarded~~ people with intellectual disabilities]. State funds for special education and related services for children with disabilities in state training centers for [~~the mentally retarded~~ people with intellectual disabilities] are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

C. State specialized children's hospitals. State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

D. Woodrow Wilson Rehabilitation Center. State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

E. Regional and local juvenile detention homes. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

F. State-operated diagnostic clinics. State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

H. The Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~]. State funds are appropriated directly to [~~these schools~~the school] to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the Virginia [~~schools~~school] shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the Virginia schools. (Virginia Appropriation Act; 34 CFR 300.705)

I. Regional and local jails. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

**8VAC20-81-280. Funding, withholding, and recovery of funds.**

A. The Virginia Department of Education shall disburse funds to local educational agencies for the education of children with disabilities, aged two to 21, inclusive, when they provide documentation of compliance with state and federal laws and regulations. (34 CFR 300.200)

B. If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall provide reasonable notice to the local educational agency that state and federal funds will not be available for reimbursement for special education programs and services. (34 CFR 300.155 and 34 CFR 300.221)

1. The notification shall include the substance of the alleged violation, and the local educational agency shall be given an opportunity to submit a written response; and

2. The local educational agency shall have the right to appeal to the Virginia Board of Education under 8VAC20-81-290.

C. Whenever the Virginia Board of Education, in its discretion, determines that a local educational agency fails to establish and maintain programs of free and appropriate public education that comply with the regulations established by the board, the board may withhold all state and federal funds for the education of eligible children with disabilities and may use the payments that would have been available to such local educational agency to provide special education, directly or by contract, to eligible children with disabilities in such manner as the board considers appropriate. (§22.1-214 E of the Code of Virginia)

D. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8VAC20-81-290, finds that a local educational agency has failed to comply with the state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that local educational agency until it complies with the state and federal laws and regulations. (34 CFR 300.155 and 34 CFR 300.222)

E. If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the local educational agency, the foregoing due process procedures shall apply. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

F. If it is determined that such funds have been erroneously claimed, the Virginia Department of Education shall bill the local educational agency for the amount of funds improperly received and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

G. Any local educational agency in receipt of a notice, as described in subsection C of this section, shall provide public notice to the local educational agency's jurisdiction regarding pendency of the action. (34 CFR 300.222)

**8VAC20-81-290. Appeal of administrative decision regarding funding.**

A. The Virginia Department of Education's recommendation to disapprove local eligibility for funding under the Act, or withhold state and federal funds for special education and related services, may be appealed by a local educational agency. (34 CFR 76.401 and 34 CFR 300.155)

B. The procedures for the appeal of administrative decisions are as follows: (34 CFR 76.401 and 34 CFR 300.155)

1. The local educational agency shall request, in writing, a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;
2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the local educational agency in writing of the date, time, and location of the hearing;
3. The hearing shall be conducted within 15 business days from the date of notification;
4. The hearing shall be conducted by an independent hearing officer in conformance with the provisions of §§2.2-4020 and 2.2-4024 of the Code of Virginia;
5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or the local educational agency;
6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;
7. The hearing officer shall review all pertinent evidence presented and shall render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;
8. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;
9. The decision made by the hearing officer shall be final unless an appeal is requested by a local educational agency;
10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department General Administrative Regulations; and
11. Notice of appeal shall be filed within 20 days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

**8VAC20-81-300. Use of public and private insurance.**

A. Children with disabilities who are covered by public benefits or insurance. (34 CFR 300.154(d))

1. A local educational agency may use Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public benefits or insurance program except as provided in subdivision 2 of this subsection.
2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. Shall provide notice to the parent(s) that the local educational agency:

(1) May not require the parent(s) to sign up for or enroll in public [benefits or] insurance programs in order for their child to receive a free appropriate public education;

(2) May not require the parent(s) to incur any out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with subsection C of this section may pay the cost that the parent(s) otherwise would be required to pay; and

(3) May not use a child's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(c) Increase premiums or lead to the discontinuation of benefits insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

b. Shall obtain informed parental consent each time that access to public benefits or insurance is sought, including parental consent to release educational information to the public benefits of insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

c. Shall provide notice to the parent(s) that refusal to allow access to their public benefits or insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

B. Children with disabilities who are covered by private insurance. (34 CFR 300.154(e))

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, a local educational agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the local educational agency proposes to access a parent's private insurance proceeds, it shall:

a. Obtain informed parental consent, including parental consent to release educational information to the private insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

b. Inform the parent(s) that the refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

C. Use of Part B funds. (34 CFR 300.154(f))

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent(s) would incur a cost for a specified service required under this chapter to ensure a free appropriate public education, the local educational agency may use its Part B funds under the Act to pay for the service.

2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's benefits or insurance (e.g., deductible or co-pay amounts).

D. Proceeds from public or private insurance. (34 CFR 80.25 and 34 CFR 300.154(g))

1. Proceeds from public benefits or insurance or private insurance is not treated as program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds are not considered state or local funds for purposes of the maintenance of effort provisions.

E. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public benefits or insurance program by federal law, regulations, or policy under title XIX or title XXI of the Social Security Act, or any other public benefits or insurance program. (34 CFR 300.154(h))

**8VAC20-81-310. Attorneys' fees.**

A. In any action or proceeding brought under §1415 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs: (34 CFR 300.517(a))

1. To the prevailing party who is the parent(s) of a child with a disability;

2. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

3. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent, or against the parent, if the parent's request for a due process hearing, or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

B. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under §1415 and Subpart E of the Act. This section does not preclude a local educational

agency from using funds under the Act for conducting an action or proceeding under §1415 of the Act. (34 CFR 300.517(b))

C. A court awards reasonable attorneys' fees under §1415 of the Act consistent with the following: (34 CFR 300.517(c))

1. Determination of amount of attorneys' fees. Fees awarded under §1415(i)(3) of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

2. Prohibition of attorneys' fees and related costs for certain services.

a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under §1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent(s) if:

(1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 calendar days before the proceeding begins;

(2) The offer is not accepted within 10 calendar days; and

(3) The court or administrative special education hearing officer finds that the relief finally obtained by the parent(s) is not more favorable to the parent(s) than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation session.

c. A resolution session convened in accordance with 8VAC20-81-210 will not be considered:

(1) A meeting convened as a result of an administrative hearing or judicial action; or

(2) An administrative hearing or judicial action for purposes of this subsection.

3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent(s) who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:

a. The parent(s), or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

- c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  - d. The attorney representing the parent(s) did not provide to the local educational agency the appropriate information in the request for a due process hearing in accordance with this chapter.
5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the Virginia Department of Education or the local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of §1415 of the Act.

## Part V

### **Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody**

#### ***8VAC20-81-320. Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.***

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education that is comparable to that provided to children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. (§§22.1-7 and 22.1-340 of the Code of Virginia)

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~]. (§§22.1-7, 22.1-347, and 22.1-348 of the Code of Virginia)

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities. (§22.1-7 of the Code of Virginia)

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Eastern Virginia Medical Center, the Virginia Commonwealth University

Health System Authority, and The University of Virginia Hospitals. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

2. The procedures outlined in 8VAC20-81-230 are applicable to each state board, agency, and institution having children with disabilities in residence and custody. (§22.1-7 of the Code of Virginia)

B. Annual program plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8VAC20-81-230.

1. In addition, the program plan shall include the following:

a. The educational objectives of the state board, agency, or institution;

b. Strategies for achieving the educational objectives, including an organized program for staff development;

c. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;

d. A system of communication to ensure service continuity in the transition of the student into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia; (§§16.1-293 and 22.1-289 E of the Code of Virginia)

e. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

f. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;

g. A cooperatively developed procedure for the evaluation of educational personnel; and

h. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board.

2. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each student to implement the student's IEP.

a. If a student has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

b. This waiver statement shall document the physical or mental condition of the individual student that requires significant modification of this schedule, and personnel from the following facilities shall file statements of concurrence:

- (1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;
- (2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions -- the Department of Correctional Education;
- (3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~];
- (4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;
- (5) The attending physician -- state medical facilities;
- (6) The detention superintendent or designee -- juvenile detention homes.

3. The Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~] shall provide for each age group of children a planned dormitory and a student-life program, including social and daily living skills, recreation, and cultural activities.

#### C. Staff and facility.

1. Each state board, agency or institution shall assign personnel to the educational program who are appropriately and adequately prepared and trained, including having the knowledge and skills to [~~service~~ serve] children with disabilities, and as follows: (34 CFR 300.156)

- a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).
- b. Additional education personnel to provide required related services as delineated in the child's IEP. [Related services providers must be qualified consistent with the requirements of subdivision 19(a) of 8VAC20-81-20.]
- c. Paraprofessionals who are trained and supervised in accordance with the requirements of the Board of Education.

2. Each state board, agency or institution shall staff the educational program as follows:

- a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;
- b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

- (1) Emotional disturbance - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~]- one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (3) Mental retardation - one teacher and one paraprofessional for every 10 children;
  - (4) Severe disability - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;
  - (5) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;
  - (6) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (7) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (8) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (9) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;
  - (10) Autism - one teacher for every six children or one teacher and one paraprofessional for every eight children;
  - (11) Traumatic brain injury - students may be placed in any program, according to the student's IEP;
  - (12) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;
  - (13) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children; and
  - (14) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of students exceeds the bed capacity, then the ratio shall be one teacher for every 12 students based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.
3. Each facility shall have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

## Part VI

### Compliance with §504 of the Rehabilitation Act of 1973, as Amended

#### **8VAC20-81-330. Compliance with §504 of the Rehabilitation Act of 1973, as amended.**

A. Each state-operated program providing educational services to persons of school age [and] the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~] shall provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan. (34 CFR 104.33)

B. Local educational agencies are required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. In meeting the due process portion of this requirement, local educational agencies may utilize the due process hearing system specified in 8VAC20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability. If this procedure is selected, the local school system is responsible for 100 percent of the reimbursement costs to the special education hearing officer and any other costs incurred and requested by the special education hearing officer or school division. The Virginia Department of Education trains special education hearing officers on 504 requirements. (34 CFR 104.7 and 34 CFR 104.36)

**8VAC20-81-340. Special education caseload staffing requirements.**

Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act.

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	8	6	24
Deaf-blindness	8	6	<u>0</u>
Developmental Delay: age 5-8	10	8	<u>0</u>
Developmental Delay: age 2-5	8 Center-based 10 Combined	12 Home-based and/or Itinerant	
Emotional [ <del>Disturbance</del> Disability ]	10	8	24
Hearing Impairment/Deaf	10	<del>10</del> <u>8</u>	24
Learning Disability	10	<del>10</del> <u>8</u>	24
[ <del>Mental Retardation</del> Intellectual Disability ]	10	<del>10</del> <u>8</u>	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	<del>10</del> <u>8</u>	24
Other Health Impaired	10	<del>10</del> <u>8</u>	24
[ <del>Severe Disabilities</del> ]	<del>8</del>	<del>6</del>	<del>0</del>
Speech or Language Impairment	<del>0</del> <u>NA</u>	<del>0</del> <u>NA</u>	68 (Itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services	20 Points (see Figure 2)		

Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

Disability Category	Level II Values		Level I Values
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the time	
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental Delay: age 5 - 8	2.0	2.5	1
Emotional [ <del>Disturbance</del> Disability ]	2.0	2.5	1
Hearing Impairment/Deaf	2.0	2.5	1
Learning Disability	2.0	2.5	1
[ <del>Mental Retardation</del> Intellectual Disability ]	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
[ <del>Severe Disabilities</del> ]	2.0	2.5	4
Traumatic Brain Injury	2.0	2.5	1

**REGULATIONS GOVERNING  
SPECIAL EDUCATION  
PROGRAMS FOR CHILDREN  
WITH DISABILITIES  
IN VIRGINIA  
(Version without Mark-up)**

**EFFECTIVE**

## FOREWORD

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

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

- 1) Ensure that any State rules, regulations, and policies relating to the IDEA '04 conform to the requirements of the federal statute and regulations;
- 2) Identify in writing to local educational agencies located in the State and the Secretary of Education any such rule, regulation, or policy as a State-imposed requirement that is not required by the federal statute and regulations; and
- 3) Minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under the federal statute and regulations.

This federal regulation also requires that State rules, regulations, and policies under the IDEA '04 shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards.

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

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

comment.

Copies of these regulations, including Braille copies, audio tapes, and large print versions are available at no cost from the Virginia Department of Education. Please forward your request to the Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23218-2120, or by calling 1-800-292-3820. Copies of these regulations are also available on the Virginia Department of Education's Web site at: [www.doe.virginia.gov/VDOE/dueproc](http://www.doe.virginia.gov/VDOE/dueproc)

## PREAMBLE

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

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

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

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

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

These regulations set forth the requirements of the Board of Education regarding the provision of special education and related services to children with disabilities in the Commonwealth, reflecting both state and federal requirements. The regulations are applicable to all local school divisions, state-operated programs, the Virginia School for the Deaf and the Blind at Staunton, and private schools in the Commonwealth that provide special education and related services to children with disabilities.

In addition to these requirements, the following statutes and regulations are applicable to children with disabilities: all regulations promulgated by the Board of Education, provisions of the *Code of Virginia* (COV), the requirements of section 504 of the Rehabilitation Act of 1973 (as amended), the Americans with Disabilities Act, the Education Department General Administrative Rules (for federal grant requirements), the Virginians with Disabilities Act, and the

**No Child Left Behind Act of 2001.**

These requirements are based on the fundamental notion that special education and related services are to be designed to meet the unique educational needs of children with disabilities, provide educational opportunity on the general curriculum to the extent possible in accordance with each child's individualized education program, and prepare children with disabilities for opportunities in post-secondary education, employment, and independent living.

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INDEX (to be developed)

## **Part I**

### **Definitions**

#### **8VAC20-81-10. Definitions.**

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

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, §1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent(s) of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§1-204 of the Code of Virginia; 34 CFR 300.520)

"Agree or Agreement" – see the definition for "consent."

"Alternate assessment" means the state assessment program, and any school division-wide assessment to the extent that the school division has one, for measuring student performance against alternate achievement standards for students with significant intellectual disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

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

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

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

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent(s) as part of the regular education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

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

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and

unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

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

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2) (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC §2301 et seq.)

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

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

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

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;

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

A "change in placement" also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.

"Change in placement" or "change of placement," for the purposes of discipline, means: (34 CFR 300.536)

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

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§22.1-212.5 through 22.1-212.16 of the Code of Virginia; 34 CFR 300.7)

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

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M.3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only

needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. (§22.1-213 of the Code of Virginia; 34 CFR 300.8 (a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

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

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent(s) of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system for services for certain at-risk youths and their families. (Chapter 52 (§2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s') or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

"Controlled substance" means a drug or other substance identified under schedules I, II, or III, IV, or V in §202(c) of the Controlled Substances Act, 21 USC §812(c). (34 CFR 300.530(i)(1))

"Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR 300.10)

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§16.1-228 and 53.1-1 of the Code of Virginia)

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

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22)

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than 3 inches in length. (18 USC §930(g)(2); COV §18.2-308.1)

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through five inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who

has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent(s) and a local educational agency. A due process hearing involves the appointment of an impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR 300.507)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC §1232g(a)(3); §22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;

2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;

3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

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

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

"Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

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

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

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting (34 CFR 300.16)

1. Amounts received:
  - a. Under Part B of the Act;
  - b. Under Part A of Title I of the ESEA; and
  - c. Under Parts A and B of Title III of the ESEA and;

2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

1. Are provided to a child with a disability:
  - a. Beyond the normal school year of the local educational agency;
  - b. In accordance with the child's individualized education program;
  - c. At no cost to the parent(s) of the child; and
2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC §7801(11))

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

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

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

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

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

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a parent(s), guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in §725 (42 USC §11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC §11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of §103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.
2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of §103(a)(2)(C);

3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory children (as such term is defined in §1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

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

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC §812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

"Impartial special education hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.

"Implementation plan" means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502 (a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family. ( 34 CFR 303.24; 20 USC §636)

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (§2.2-5300 of the Code of Virginia; 34 CFR 300.25)

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

"Informed parental consent": see "Consent."

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

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued speech/language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

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

"Level II services" means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time

that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual: (20 USC §7801(25); 34 CFR 300.27)

1. Who is aged 2 through 21;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or
3. Who:
  - a. Was not born in the United States or whose native language is a language other than English;
  - b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
  - c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
  - a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;
  - b. The ability to successfully achieve in classrooms where the language of instruction is English; or
  - c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton. Neither state-operated programs nor the Virginia School for the Deaf and Blind at Staunton are considered a school division as that term is used in these regulations. (§22.1-346 C of the Code of Virginia; 34 CFR 300.28)

"Long-term placement" if used in reference to state-operated programs as outlined in 8VAC20-81-30 H. means those hospital placements which are not expected to change in status or condition because of the child's medical needs.

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

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" – see "Intellectual Disability."

"Multiple disabilities" means simultaneous impairments (such as intellectual disability with blindness, intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: (34 CFR300.172)

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

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard established by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. (34 CFR300.172)

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent(s) of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the parent(s), or, if the language or other mode of communication of the parent(s) is not a written language, oral communication in the primary language of the home of the parent(s). If an individual is deaf or blind, or

has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

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

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

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

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome that adversely affects a child's educational performance. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§20-124.6 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":
  - a. A biological or adoptive parent of a child,
  - b. A foster parent:
    - (1) If the biological parent(s)' authority to make educational decisions on the child's behalf has been extinguished under §16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia or a comparable law in another state;
    - (2) The child is in permanent foster care pursuant to Chapter 9 (§63.2-900 et seq.) of Title 63.2 of the Code of Virginia or comparable law in another state; and
    - (3) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of the parent under this chapter, and has no interest that would conflict with the interests of the child.
  - c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);
  - d. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
  - e. A surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220.
  - f. A minor who is emancipated under §16.1-333 of the Code of Virginia.
2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person(s) shall be determined to be the "parent" for purposes of this definition.
3. "Parent" does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.
4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.
5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.
6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.

7. A validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record, and thus, assume responsibilities of "parent" under this chapter.

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

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

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

"Private school children with disabilities" means children with disabilities enrolled by their parent(s) in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

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

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent(s). (34 CFR 300.502(a)(3)(ii))

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

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC §701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

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

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational

rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC §701 et seq.), as amended. (34 CFR 300.34(c)(12))

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

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

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that: (20 USC §9501(18); 34 CFR 300.35)

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

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

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC §701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. (18 USC §1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the local educational agency will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660); 34 CFR 300.34(c)(14))

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

A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.

"Special education" means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§22.1-213 of the Code of Virginia; 34 CFR 300.39)

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

"Special education hearing officer" has the same meaning as the term "impartial hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

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

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including

conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (§22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

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

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

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

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be

educated with children without disabilities to the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. (34 CFR 300.172(b)(4))

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

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

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

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

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

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

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

"Universal design" has the meaning given the term in §3 of the Assistive Technology Act of 1998, as amended, 29 USC §3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton means the Virginia school under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of this school. (§22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

1. A foster child;

2. A ward of the state; or
3. In the custody of a public child welfare agency.

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

"Weapon" means dangerous weapon under 18 USC §930(g)(2). (34 CFR 530(i)(4))

**Part II**  
**Responsibilities of the State Department of Education**

***8VAC20-81-20. Functions of the Virginia Department of Education.***

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

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to, children with disabilities who: (34 CFR 300.2 and 34 CFR 300.101)
  - a. Are migrant;
  - b. Are homeless;
  - c. Have been suspended or expelled from school, in accordance with this chapter;
  - d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8VAC20-81-110 I;
  - e. Are receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;
  - f. Are in state-operated programs; or
  - g. Are in public charter schools in accordance with the Code of Virginia.
2. Except as provided in 8VAC20-81-170 E.4.b.(3), ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team. (34 CFR 300.112 and 34 CFR 300.300(b)(4)(ii))
3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities. (§22.1-215 of the Code of Virginia; 34 CFR 300.200)
4. Ensure that each local educational agency includes all children with disabilities in all general Virginia Department of Education and division-wide assessment programs, including assessments described in §1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at §1412. (20 USC §1412(a)(16)(A))
5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in

the areas served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education. (34 CFR 300.110)

6. Ensure that each educational program for children with disabilities administered within Virginia: (34 CFR 300.149(a))

- a. Is under the general supervision of the persons responsible for educational programs for children with disabilities in Virginia; and
- b. Meets the educational standards of the Virginia Department of Education.

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

7. Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools. (34 CFR 300.165)

8. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities. (§22.1-214 of the Code of Virginia; 34 CFR 300.199 and 34 CFR 300.129)

9. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to LRE requirements by: (34 CFR 300.119)

- a. Ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements; and
- b. Providing them with technical assistance and training necessary to assist them in this effort.

10. Ensure that the requirements for LRE are implemented by each local educational agency. If there is evidence that a local educational agency's placements are inconsistent with LRE requirements, the Virginia Department of Education shall: (34 CFR 300.120)

- a. Review the local educational agency's justification for its actions; and
- b. Assist in planning and implementing any necessary corrective action.

11. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed. (34 CFR 300.149, 34 CFR 300.151 and 34 CFR 300.507)

- a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, evaluating special education hearing officers, and management and monitoring of hearings.

- b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding alleged violations of the educational rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.
12. Establish and implement a mediation process in accordance with the Act. (§22.1-214 of the Code of Virginia; 34 CFR 300.506)
13. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure that each child with a disability placed in the school by a local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.129, 34 CFR 300.146 and 34 CFR 300.147)
- a. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires:
- b. Provide copies of all Virginia regulations and standards; and
- c. Provide an opportunity for these schools to participate in the development and revision of Virginia's regulations that apply to them.
14. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.149)
15. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. (34 CFR 300.167 through 34 CFR 300.169)
- a. Membership. The membership shall consist of individuals appointed by the Superintendent of Public Instruction or designee who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities (ages birth through 26). Membership shall include one or more of the following:
- (1) Parents of children with disabilities (ages birth through 26);
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;

- (5) State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Act (42 USC §11431 et seq);
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools and public charter schools;
- (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (10) A representative from Virginia's juvenile and adult corrections agencies; and
- (11) A representative from Virginia's child welfare agency responsible for foster care.

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

- (1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;
- (2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;
- (3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Act;
- (4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;
- (5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and
- (6) Review the annual plan submitted in accordance with 8VAC20-81-230 B.2. submitted by state-operated programs and the Virginia School for the Deaf and the Blind at Staunton.

c. Procedures.

- (1) The state special education advisory committee shall meet as often as necessary to conduct its business.
- (2) By October 1 of each year, the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report shall be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.
- (3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.

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

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

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

16. Provide a report annually to the state special education advisory committee on the Virginia Department of Education's dispute resolution systems, including information related to due process hearings and decisions. This report and due process hearing decisions, with all personally identifiable information deleted, are made available to the public on the Virginia Department of Education's website. (34 CFR 300.513(d))

17. Establish goals for the performance of children with disabilities that: (34 CFR 300.157(a))

a. Promote the purposes of the Act;

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

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

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

18. Establish performance indicators Virginia will use to assess progress toward achieving the goals in subdivision 17 of this section, including measurable annual objectives for progress by children with disabilities under §1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC §6311. Annually report to the public and the United States Secretary of Education on the progress of children with disabilities in Virginia, toward meeting the goals described in subdivision 17 of this section, which may include elements of the reports required under §1111(h) of the ESEA. (34 CFR 300.157(b) and (c))

19. Establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. These requirements include: (34 CFR 300.156(a) through (d))

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

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

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

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

b. Ensuring that each person employed as a public school special education teacher in Virginia who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in §11119(a)(2) of the ESEA.

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

20. Respond to complaints filed by a parent about staff qualifications as provided for under this chapter. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or local educational agency employee to be highly qualified. (34 CFR 300.156(e))

21. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic educational agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings. (34 CFR 300.154)

22. Disburse the appropriated funds for the education of children with disabilities in Virginia to local school divisions and state-operated programs that are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities. (34 CFR 300.705 and 34 CFR 300.816)

23. Ensure that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving needed special education and related services. Report and certify annually to the United States Department of Education the number of children with disabilities in local educational agencies who are receiving special education and related services on a date between October 1 and December 1 of each year determined by the Superintendent of Public Instruction or designee. The annual report of children served shall meet the provisions of 34 CFR 300.641 through 34 CFR 645. (34 CFR 300.111 and 34 CFR 300.640)

24. Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in the local educational agencies. This method shall include the collection and examination of data with respect to: (34 CFR 300.646(a) and 34 CFR 300.173)

- a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability";
- b. The placement in particular educational settings of these children; and
- c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

25. Ensure that in the case of the determination of significant disproportionality, as outlined in subdivision 24 of this section, the Virginia Department of Education shall: (34 CFR 300.646(b))

- a. review and, if appropriate, provide for the revision of the policies, procedures, and practices used by the local educational agency in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of this chapter;
- b. require any local educational agency determined to have a significant disproportionality to reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly, but not exclusively, children in those groups that were significantly overidentified; and
- c. require the local educational agency to publicly report on the revision of policies, practices, and procedures addressing the disproportionality.

26. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures, and ensure that each local educational agency is informed of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that local educational agency. (34 CFR 300.121 and 34 CFR 300.150)

27. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met. (34 CFR 300.154(d) and (e))

28. Ensure that if the Virginia Department of Education provides direct services to children with disabilities, it complies with state and federal requirements as if it is a local educational agency and uses federal funds under Part B of the Act to provide services. (34 CFR 300.175)

a. The Virginia Department of Education may use payments that would otherwise have been available to a local educational agency under Part B of the Act to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of the excess cost requirements as outlined in 8VAC20-81-260.

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

29. Ensure that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures as follows: (34 CFR 300.124)

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

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

30. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of information as specified in 34 CFR 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR 300.612 through 34 CFR 300.626. (34 CFR 300.123 and 34 CFR 300.610)

31. Ensure that a practical method is developed and implemented to: (34 CFR 300.170)

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

(1) Among local educational agencies in Virginia; or

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

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

32. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities. (34 CFR 300.172)

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

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

33. Prohibit the Virginia Department of Education and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 USC §812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter. (34 CFR 300.174(a))

34. Monitor, enforce, and provide technical assistance regarding the implementation of the requirements under the Act. These actions include: (34 CFR 300.600 through 34 CFR 300.609; 34 CFR 300.640 through 300.645; 34 CFR 300.149(b) and 34 CFR 300.165(b)

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

b. Taking appropriate enforcement and technical assistance measures to assist local educational agencies in complying with the provisions of the Act in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602 and 34 CFR 300.608.

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

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

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

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

- e. Using the targets established in Virginia's performance plan and the priority areas described in 34 CFR 300.600(d) to analyze the performance of each local educational agency.
- f. Following all the reporting requirements under 34 CFR 300.602(b).
- g. Notifying the public of the pendency of an enforcement action taken by the U.S. Department of Education pursuant to 34 CFR 300.604.
- h. Prohibiting the local educational agency from reducing the local educational agency's maintenance of effort under 34 CFR 300.203 for any fiscal year if the Virginia Department of Education determines that a local educational agency is not meeting the requirements of Part B of the Act, including the targets in Virginia's state performance plan.

### **Part III**

#### **Responsibilities of Local School Divisions and State-Operated Programs**

##### ***8VAC20-81-30. Responsibility of local school divisions and state-operated programs.***

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

B. Each local school division shall ensure that all children with disabilities, aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education. (§22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR 300.209)

The children include:

1. Children with disabilities who are migrant;
2. Children with disabilities who are homeless;
3. Children with disabilities who are in need of special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade;
4. Children with disabilities who are served in a public nonprofit charter school;
5. Children with disabilities who have been suspended or expelled from school;
6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction, with the exception of those additional provisions identified in 8VAC20-81-110 I;
7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction;
8. Children with disabilities who are in foster care and residents of Virginia;

9. Children with disabilities who are placed for noneducational reasons; and
10. Children with disabilities regardless of citizenship or immigration status.

C. Every child with a disability is deemed to reside in a school division when (§22.1-3 of the Code of Virginia):

1. The child is living with a biological parent whose parental rights have not been terminated.
2. The child is living with an adoptive parent.
3. The child is living with an individual:
  - a. Other than the custodial parent but who is defined as a parent in §22.1-1 of the Code of Virginia, not solely for school purposes, and
  - b. Pursuant to a special power of attorney executed under 10 USC §1044b by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.
4. The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the school division.
5. The parents of the child are unable to care for him and he is living, not solely for school purposes, with another person who resides in the school division and is either:
  - a. The court-appointed guardian, or has legal custody; or
  - b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under §63.2-900 of the Code of Virginia.
6. The child is living in the school division not solely for school purposes, as an emancipated minor pursuant to the provisions of the §16.1-334 of the Code of Virginia.
7. The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.
8. The child is in foster care and a resident of Virginia, but not a resident of the school division, under the following conditions: (§22.1-215 of the Code of Virginia)
  - a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or
  - b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of the school division.

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

D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)

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

1. The local school division that is part of the Comprehensive Services Act team that places the child in a private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.

2. If a child in foster care is placed in a local school division of nonresidence and the IEP team of the local school division of nonresidence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has responsibility for the child under the Comprehensive Services Act (Chapter 52 (§2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).

3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides.

4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides.

5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian

to make decisions, the adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.

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

9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105-10 et seq., the child is a resident of the division where the parent(s) reside.

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

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

H. Each state-operated program shall ensure that the requirements in this chapter are applied to children with disabilities, aged two to 21, inclusive, in that institution. (§22.1-7 of the Code of Virginia)

1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.

2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.

I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division may, in the discretion of the local school board's policies and procedures, be admitted to the public schools of the school division for special education and related services. Tuition charges associated with this admittance are subject to the provisions of §22.1-5 of the Code of Virginia.

**8VAC20-81-40. Special education staffing requirements.**

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (§22.1.253.13:2 of the Code of Virginia) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240).

1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.
  - a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.
  - b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities.
2. Personnel assignment.
  - a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).
  - b. Special education teachers who are the teachers of record shall be highly qualified.
  - c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.
  - d. Special education services include those services provided directly to the student and those provided indirectly.
3. Caseload standards.
  - a. The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.
  - b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

(1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

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

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

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

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

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

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

#### B. Staffing for early childhood special education.

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

#### 2. Staffing requirements.

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

b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

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

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

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services for children who are deaf or hard of hearing are as follows:

a. Personnel providing educational interpreting services for children using sign language shall:

(1) have a valid Virginia Quality Assurance Screening (VQAS) Level III, or

(2) a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.

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

c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.

2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with the following criteria:

- a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or
  - b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.
3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:
- a. Personnel providing educational interpreting services for children using sign language shall hold
    - (1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or
    - (2) a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
    - (3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.
    - (4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.
  - b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
    - (1) Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.
    - (2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.
  - c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.
4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.

**8VAC20-81-50. Child find.**

A. Child find.

1. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who: (34 CFR 300.102 and 34 CFR 300.111)
  - a. Are highly mobile, such as migrant and homeless children;
  - b. Are wards of the state;
  - c. Attend private schools, including children who are home-instructed or home-tutored;
  - d. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade; and
  - e. Are under age 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.
2. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council. (34 CFR 300.124)
3. Each local school division shall locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools. (34 CFR 300.131, 34 CFR 300.133, 34 CFR 300.134)
  - a. The child find process shall be designed to ensure:
    - (1) The equitable participation of parentally placed private school children, and
    - (2) An accurate count of those children.
  - b. The local school division shall undertake activities similar to the activities undertaken for its public school children.
  - c. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR 300.133.
  - d. The child find process shall be completed in a time period comparable to that for students attending public school in the local educational agency.
  - e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States.

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

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

**B. Public awareness.**

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

- a. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free appropriate public education and the availability of special education programs and services;
- b. Generate referrals; and
- c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

**C. Screening.**

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

- a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8VAC20-250-10. (§22.1-273 of the Code of Virginia)
- b. Children shall be screened for scoliosis in accordance with the requirements of 8VAC20-690-20. (§22.1-273.1 of the Code of Virginia)
- c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.
- d. Children who fail any of the above screenings may be rescreened if the original results are not considered valid.
- e. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia. (§22.1-270 of the Code of Virginia)
- f. Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.

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

- a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;
- b. Confidentiality; and
- c. Maintenance of the student's scholastic record.

3. Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)

#### D. Referrals.

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

2. Each school shall have a team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child's educational and behavioral needs.

a. The team shall include:

- (1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);
- (2) The principal or designee;
- (3) At least one teacher; and
- (4) At least one specialist.

b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.

c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.

3. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.

a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.

b. If the referral is made to the special education administrator or designee, the administrator shall within 3 business days:

- (1) initiate the evaluation-eligibility process in accordance with 8VAC20-81-60; -70; -80;

- (2) require that the school-based team review and respond to the request; or
- (3) deny the request.

(a) If the request is denied, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures. (34 CFR § 300.507)

4. In reviewing the child's performance, the team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures. (34 CFR § 300.307)

a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.

b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services. (34 CFR § 300.309)

5. Timelines for Referral Process

a. The team shall meet within 10 business days following the receipt of the referral.

b. The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.

c. If the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing. (34 CFR § 300.507)

6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.

E. Prohibition on mandatory medication (34 CFR 300.174).

1. The Virginia Department of Education prohibits state and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 USC §812(c)) for a child as a condition of attending school, receiving an evaluation under 34 CFR 300.300 through 34 CFR 300.311, or receiving services under this part.

2. Teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

**8VAC20-81-60. Referral for initial evaluation.**

A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, other individuals, or a school-based team in accordance with 8VAC20-81-50 D.5.b. (34 CFR 300.301(b))
2. The referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.
3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected of having a disability, from a source other than the school-based team, the special education administrator, or designee, shall:
  - a. initiate the initial evaluation procedures under subsection B;
  - b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.(2);or
  - c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170.

B. Procedures for referral for initial evaluation.

1. The special education administrator, or designee, shall:
  - a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;
  - b. Implement procedures for maintaining the confidentiality of all data;
  - c. Provide written notice and procedural safeguards to inform the parent(s) in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:
    - (1) The referral for evaluation,
    - (2) The purpose of the evaluation, and
    - (3) Parental rights with respect to evaluation and other procedural safeguards;
  - d. Inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child;
  - e. Secure informed consent from the parent(s) for the evaluation;
  - f. Ensure that all evaluations consist of procedures that:

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

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

g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action. The time frame shall not apply to the local school division if (34 CFR 300.301 (d) and (e)):

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

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

h. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days. (34 CFR 300.300(a), 34 CFR 300.309(c))

i. If the decision is to not evaluate, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's right to appeal the decision through due process hearing procedures. (34 CFR 300.507)

## 2. Parental consent requirements. (34 CFR 300.300)

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

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

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

d. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local school division is not required to obtain parental consent to determine whether the child is a child with a disability if:

- (1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;
- (2) The rights of the parents of the child have been terminated in accordance with Virginia law; or
- (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

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

e. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

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

**8VAC20-81-70. Evaluation and reevaluation.**

A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section.(34 CFR 300.122)

B. Determination of needed evaluation data for initial evaluation or reevaluation. (34 CFR 300.305 and 34 CFR 300.507)

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

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

- (1) Evaluations and information provided by the parent(s) of the child;
- (2) Current classroom-based, local, or state assessments and classroom-based observations; and
- (3) Observations by teachers and related services providers; and

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

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

- (2) The present educational needs of the child;
- (3) The child's present level of academic achievement and related developmental needs;
- (4) Whether the child needs or continues to need special education and related services; and
- (5) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. Requirements if additional data are not needed:

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

- (1) the determination and the reasons for it; and
- (2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

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

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

d. This process shall be considered the evaluation if no additional data are needed.

5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.

C. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. (§22.1-214 of the Code of Virginia; 34 CFR 300.304 and 34 CFR 300.310)

1. Assessments and other evaluation materials used to assess a child under this chapter are:

- a. selected and administered so as not to be discriminatory on a racial or cultural basis;
  - b. provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
  - c. are used for the purposes for which the assessments or measures are valid and reliable; and
  - d. are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.
2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
  3. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
  4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
  5. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.
  6. Any nonstandardized assessment administered by qualified personnel may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.
  7. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  8. Assessments are selected and administered so as to best ensure that if an assessment is administered to a child with impaired sensory, motor, or communication skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).
  9. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

10. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

11. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

12. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.

13. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

14. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.

a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.

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

D. The evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility. (34 CFR 300.306(a)(2))

1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.

2. The evaluation report(s) shall be provided to the parent(s) at no cost.

E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 8VAC20-81-60 B.1.g., to ensure prompt completion of full evaluations. (34 CFR 300.304(c)(5))

F. Reevaluation.

1. A reevaluation shall be conducted: (34 CFR 300.303(a) and (b)(2))

- a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;
- b. If the child's parent(s) or teacher requests a reevaluation; or
- c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.

2. The local educational agency shall not conduct a reevaluation more than once a year unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the parent(s) with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.303(b)(1))

3. The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section.(34 CFR 300.305)

G. Parental consent for reevaluation. (34 CFR 300.300(c) and (d))

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

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

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

2. Parental consent is not required before:

- a. Review of existing data as part of an evaluation or reevaluation;
- b. A teacher's or related service provider's observations or ongoing classroom evaluations; or
- c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

3. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8VAC20-81-150 for parentally placed students.

H. Timelines for reevaluations.

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.
  2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days of the receipt of the referral by the special education administrator or designee for the evaluation.
  3. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days.
- I. The local educational agency is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency is required to provide the parent with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.305(e)(2))

**8VAC20-81-80. Eligibility.**

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

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

C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110. (34 CFR 300.306, 34 CFR 300.308)

1. The determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:
  - a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;
  - b. Interpret assessment and intervention data, and apply critical analysis to those data; and
  - c. Develop appropriate educational and transitional recommendations based on the assessment data.
2. The eligibility group composition.

a. The group may be an IEP team, as defined in 8VAC20-81-110, as long as the above requirements and notice requirements of 8VAC20-81-170 are met.

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

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

(2) The special education administrator or designee;

(3) The parent(s);

(4) A special education teacher;

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

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

D. Procedures for determining eligibility and educational need. (34 CFR 300.306 through 34 CFR 300.311)

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

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

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

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

3. Observation.

a. The local educational agency shall: ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

b. The eligibility group, in determining whether a child is a child with a disability shall:

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.

- c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.
4. A child shall not be determined to be eligible under this chapter if the child does not otherwise meet the eligibility criteria, or the determinant factor is:
  - a. Lack of appropriate instruction in reading, including the essential components of reading instruction:
    - (1) Phonemic awareness,
    - (2) Phonics,
    - (3) Vocabulary development,
    - (4) Reading fluency, including oral reading skills, and
    - (5) Reading comprehension strategies;
  - b. Lack of appropriate instruction in math; or
  - c. Limited English proficiency.
5. The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. This documentation shall include a statement of:
  - a. Whether the child has a specific disability.
  - b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.
  - c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
  - d. The educationally relevant medical findings, if any.
  - e. The instructional strategies used and the student-centered data collected if the child has participated in a response to scientific, research-based intervention process. This document shall also include:
    - (1) The local educational agency's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected;
    - (2) The strategies that were used to increase the child's rate of learning; and
    - (3) The parent's right to request an evaluation.
  - f. For identification of a child with a specific learning disability, whether consistent with the requirements of subdivision T.2.a. and T.2.b. of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and

(1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or

(2) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards or intellectual development.

g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T.2.c. of this section.

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

7. The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall submit a written statement presenting that member's conclusions.

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

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

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

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

E. Nothing in this chapter requires that children be identified by their disability on IEPs, local educational agency communications to parents regarding eligibility determinations, or other similar communications to parents. For such communications, local educational agencies shall identify that each child has a disability under this chapter and by reason of that disability needs special education and related services, and is regarded as a child with a disability.

F. Eligibility for related services. A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team. (34 CFR 300.34 and 34 CFR 300.306(c)(2))

G. Two-year-old children previously served by Part C. A child, aged two, previously participating in early intervention services assisted under Part C of the Act, shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age two, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child. (34 CFR 300.124)

H. For all children suspected of having a disability, local educational agencies shall:

1. use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and
2. have documented evidence that by reason of the disability, the child needs special education and related services. (34 CFR 300.307(b))

I. The Virginia Department of Education permits each local educational agency to use a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and permits each local educational agency to use other alternative research-based intervention and procedures. (34 CFR 300.307)

J. Eligibility as a child with autism.

1. The group may determine that a child has autism if:
  - a. there is an adverse effect on the child's educational performance due to documented characteristics of autism, as outlined in this section; and
  - b. the child has any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhetts Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references.

(1) Children with Asperger's Disorder demonstrate the following characteristics:

- (a) impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction, failure to develop peer relationships appropriate to developmental level, a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest), or lack of social or emotional reciprocity are noted; and

(b) restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects

(2) Children with autistic disorder, in addition to the characteristics listed in subdivision (1)(a) and (1)(b) above, also demonstrate impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.

(3) Children with Pervasive Developmental Disorder-Not Otherwise Specified or Atypical Autism may display any of the characteristics listed in subdivisions (1)(a), (1)(b), and (2) without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

K. Eligibility as a child with deaf-blindness. The group may determine that a child has deaf-blindness if the definition of "deaf-blindness" as outlined in 8VAC20-81-10 is met.

L. Eligibility as a child with deafness.

1. The group may determine that a child has deafness if:

- a. the definition of "deafness" is met in accordance with 8VAC20-81-10;
- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of an deafness, as outlined in subdivision 2 of this subsection; and
- c. the child has a bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), and/or cortical deafness.

M. Eligibility as a child with developmental delay. (34 CFR 300.111(b))

1. The group may determine that a child has a developmental delay if:

- a. the local educational agency permits the use of developmental delay as a disability category when determining whether a preschool child, aged two by September 30 to five, inclusive, is eligible under this chapter; and
- b. the definition of "developmental delay" is met in accordance with 8VAC20-81-10; or
- c. the child has a physical or mental condition which has a high probability of resulting in a developmental delay.

2. Eligibility as a child with a disability for children ages 2 through 5 shall not be limited to developmental delay if eligibility can be determined under another disability category.<sup>3</sup> A local educational agency is not required to adopt and use developmental delay as a disability category for any children within its jurisdiction. If the local educational agency permits the use of developmental delay as a disability category, it shall comply with the eligibility criteria outlined in this section.

N. Eligibility as a child with an emotional disability.

1. The group may determine that a child has an emotional disability if:
  - a. the definition of “intellectual disability” is met in accordance with 8VAC20-81-10; and
  - b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of an emotional disability.

O. Eligibility as a child with a hearing impairment.

1. The group may determine that a child has a hearing impairment if:
  - a. the definition of “hearing impairment” is met in accordance with 8VAC20-81-10; and
  - b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of a hearing impairment, as outlined in subdivision 2 of this subsection.
2. Characteristics of children with a hearing impairment include unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dys-synchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance.
3. The term “hard of hearing” may be used in this capacity.

P. Eligibility as a child with an intellectual disability.

1. The group may determine that a child has an intellectual disability if:
  - a. the definition of “intellectual disability” is met in accordance with 8VAC20-81-10;
  - b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of an intellectual disability, as outlined in subdivision 2 of this subsection; and
  - c. the child has:
    - (1) significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the assessment, on an individually administered, standardized measure of intellectual functioning;
    - (2) concurrently, significantly impaired adaptive behavior as determined by a composite score on an individual standardized instrument of adaptive behavior that measures two standard deviations or more below the mean; and

(3) developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.

Q. Eligibility as a child with multiple disabilities. The group may determine that a child has multiple disabilities if the definition of “multiple disabilities” is met in accordance with 8VAC20-80-10.

R. Eligibility as a child with an orthopedic impairment.

1. The group may determine that a child has an orthopedic impairment if:

- a. the definition of “orthopedic impairment” is met in accordance with 8VAC20-81-10; and
- b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of an orthopedic impairment.

S. Eligibility as a child with other health impairment.

1. The group may determine that a child has an other health impairment if:

- a. the definition of “other health impairment” is met in accordance with 8VAC20-81-10; and
- b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of the other health impairment.

T. Eligibility of a child with a specific learning disability. (34 CFR 300.307 and 34 CFR 300.309)

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

- a. the definition of “specific learning disability” is met in accordance with 8VAC20-81-10; and
- b. the criteria for determining the existence of a specific learning disability are met.

2. The criteria for determining the existence of a specific learning disability are met if:

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

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skills;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematical calculations; or
- (8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 2 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits

a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70; and

c. The group determines that its findings under subdivision 2 a and b of this subsection are not primarily the result of:

- (1) A visual, hearing, or motor impairment;
- (2) Intellectual disability;
- (3) Emotional disability;
- (4) Environmental, cultural, or economic disadvantage; or
- (5) Limited English proficiency.

3. The Virginia Department of Education does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.

(34 CFR 300.307(a))

U. Eligibility as a child with speech or language impairment.

1. The group may determine that a child has a speech or language impairment if:

- a. the definition of “speech or language impairment” is met in accordance with 8VAC20-81-10;
- b. there is an adverse effect on the child’s educational performance due to one or more documented characteristics of speech or language impairment;
- c. the child has a significant discrepancy from typical communication skills in one or more of the following areas; fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and
- d. Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment.

2. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of socio-cultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.

3. Speech language pathology services may be special education or a related service.

V. Eligibility as a child with a traumatic brain injury.

1. The group may determine that a child has a traumatic brain injury if:

- a. the definition of “traumatic brain injury” is met in accordance with 8VAC20-81-10; and

- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of traumatic brain injury.

W. Eligibility as a child with a visual impairment.

1. The group may determine that a child has a visual impairment if:

- a. the definition of "visual impairment" is met in accordance with 8VAC20-81-10;
- b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of visual impairment; and
- c. the child:
  - (1) demonstrates the characteristics of blindness or visual impairment, as outlined in subdivisions 2 and 3 of this subsection; or
  - (2) has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision, which may in the future, have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.

2. A child with blindness demonstrates the following:

- a. Visual acuity in the better eye with best possible correction of 20/200 or less at distance and/or near; and/or
- b. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.

3. A child with a visual impairment demonstrates the following:

- a. Visual acuity better than 20/200 but worse than 20/70 at distance and/or near; and/or
- b. Visual field restriction in the better eye of remaining visual field of 70 degrees or less but better than 20 degrees.

X. Children found not eligible for special education.

1. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence. (34 CFR 300.622)

2. If the school division decides that a child is not eligible for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures. (34 CFR 300.503; 300.507)

**8VAC20-81-90. Termination of special education and related services.**

A. Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.

1. Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.

2. The local educational agency shall evaluate a child with a disability in accordance with 8VAC20-81-70 before determining that the child is no longer a child with a disability under this chapter.

3. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22. (34 CFR 300.305(e))

B. The IEP team shall terminate the child's eligibility for a related service without determining that the child is no longer a child with a disability who is eligible for special education and related services.

1. The IEP team shall make this determination based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.

C. Written parental consent shall be required prior to any partial or complete termination of services.

D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C.

E. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the eligibility procedures in 8VAC20-81-80 to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child. (34 CFR 300.9 and 34 CFR 300.305(e))

F. Summary of academic achievement and functional performance. (34 CFR 300.305(e)(3))

1. For a child whose eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22, the local educational agency shall provide the child with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the local educational agency may provide the child with a summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the local educational agency shall provide the child with an updated summary when the child exits, or when the

child's eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

**8VAC20-81-100. Free appropriate public education.**

A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the definition of "age of eligibility" as outlined in 8VAC20-81-10 and who reside within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they have not failed or been retained in a course or grade and are advancing from grade to grade, and students who have been suspended or expelled from school in accordance with the provisions of 8VAC20-81-160. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015. (§22.1-213 of the Code of Virginia; 34 CFR 300.101 and 34 CFR 300.109)

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

b. The services and placement needed by each child with a disability to receive a free appropriate public education shall be based on the child's unique needs and not on the child's disability.

2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to: (34 CFR 300.102(a))

a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to age-eligible students who have graduated but have not been awarded a standard or advanced studies high school diploma, or to those students who have been awarded a general educational development (GED) credential.

b. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

c. Children with disabilities who are eligible under IDEA Part B, Subpart H, but who receive early intervention services under IDEA Part C.

B. A free appropriate public education shall be available to children with disabilities who reside within a school division but do not hold a valid U.S. citizenship or a student visa.

C. Program options. Each local school division shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (34 CFR 300.110)

D. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, shall be at no cost to the parents of the child. (34 CFR 300.104)

E. Assistive technology devices. (34 CFR 300.34(b) and 34 CFR 300.113)

1. Each local educational agency shall ensure that the following are functioning properly, including completing routine checks:

- a. Hearing aids worn in school by children with hearing impairments, including deafness; and
- b. The external components of surgically implanted devices.

2. A local educational agency is not responsible for the postsurgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device.)

F. Availability of assistive technology. (34 CFR 300.105)

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 8VAC20-81-10, are made available to a child with a disability if required as part of the child's:

- a. Special education;
- b. Related services; or
- c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

3. Local educational agencies are not required to provide personal devices, including eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.

G. Transportation. (§§22.1-221 and 22.1-347 of the Code of Virginia; 34 CFR 300.107)

1. Each child with a disability, aged two to 21, inclusive, placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications shall be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.

3. A local educational agency shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.

4. If a local educational agency enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent(s).

5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at Staunton, the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

H. Nonacademic and extracurricular services and activities. (34 CFR 300.107 and 34 CFR 300.117)

1. Each local educational agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (See also 8VAC20-81-130 A.2.)

2. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

I. Physical education. (34 CFR 300.108)

1. General. Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a free appropriate public education, unless the local educational agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.
2. Regular physical education. Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:
  - a. The child is enrolled full time in a separate facility; or
  - b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.
3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the local educational agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.
4. Education in separate facilities. The local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with this subsection.

J. Extended school year services. (34 CFR 300.106)

1. Each local educational agency shall ensure that extended school year services, including transportation to and from such services, are available as necessary to provide a free appropriate public education consistent with subdivision 2 of this subsection.
2. Extended school year services shall be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.
3. In implementing the requirements of this section, a local educational agency may not:
  - a. Limit extended school year services to particular categories of disability;
  - b. Unilaterally limit the type, amount, or duration of those services; or
  - c. Limit the provision of extended school year services to only the summer.

K. Children with disabilities in public charter schools. (34 CFR 300.209)

1. Children with disabilities who attend charter schools shall be served by the local school division in the same manner as children with disabilities in its other schools, including the provision of

supplementary and related services on site at the charter school to the same extent to which the local educational agency provides such services on the site to its other public schools.

2. The local school division shall ensure that all requirements of this chapter are met.

L. Length of school day. School-aged students with disabilities shall be provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise. For preschool-aged children with disabilities, the IEP team determines the length of the school day.

M. Methods and payments. (34 CFR 300.103)

1. The Virginia Department of Education may use whatever state, local, federal, and private sources of support that are available to meet the requirements of this part.

2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

N. Disability harassment. Each local educational agency shall have in effect policies that prohibit harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)

**8VAC20-81-110. Individualized education program.**

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by: (34 CFR 300.112)

1. A local school division; or

2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, each local educational agency shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue. (34 CFR 300.323(a))

2. Each local educational agency shall ensure that an IEP: (34 CFR 300.323(c))

a. Is in effect before special education and related services are provided to an eligible child;

- b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;
  - c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and
  - d. Is implemented as soon as possible following parental consent to the IEP.
3. Each local educational agency shall ensure that: (34 CFR 300.323(d))
- a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
  - b. Teachers and providers are informed of:
    - (1) Their specific responsibilities related to implementing the child's IEP; and
    - (2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.
4. Each local educational agency is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.
5. Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))
- a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
  - b. The results of any reevaluation conducted under this chapter;
  - c. Information about the child provided to or by the parent(s);
  - d. The child's anticipated needs; or
  - e. Other matters.
6. Each local educational agency shall provide special education and related services to a child with a disability in accordance with the child's IEP. (34 CFR 300.323 (c)(2))
7. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.
8. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))
9. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent(s) and the local educational agency may agree not to convene an IEP team meeting for the

purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))

- a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes.
- b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.
- c. This meeting is not a substitute for the required annual IEP meeting.

C. IEP team.

1. General. The local educational agency shall ensure that the IEP team for each child with a disability includes: (34 CFR 300.321(a), (c) and (d))

- a. The parent(s) of the child;
- b. Not less than one regular education teacher of the child (if the child is or may be participating in the regular educational environment);
- c. Not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist;
- d. A representative of the local educational agency who is:
  - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
  - (2) Knowledgeable about the general education curriculum; and
  - (3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;
- e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child;
- f. At the discretion of the parent(s) or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or local educational agency) who invited the individual to be a member of the team; and
- g. Whenever appropriate, the child.

2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.

3. Secondary transition service participants. (34 CFR 300.321(b))

a. The local educational agency shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

- (1) The student's postsecondary goals;
- (2) The needed transition services for the student; or
- (3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Part C transition participants. In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's(s)' request, invite the Part C service coordinator or other representatives of the Part C system to the initial IEP meeting to assist with the smooth transition of services. (34 CFR 300.321(f))

D. IEP team attendance. (34 CFR 300.321(e))

1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

- a. The parent and the local educational agency consent in writing to the excusal; and
- b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

E. Parent participation.

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))

- a. Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and

- b. Scheduling the meeting at a mutually agreed on time and place.
2. Notice. (34 CFR 300.322(b))
- a. General notice. The notice given to the parent(s):
    - (1) May be in writing, or given by telephone or in person with proper documentation;
    - (2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and
    - (3) Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child under subdivision C 1 f of this section.
  - b. Additional notice requirements are provided if transition services are under consideration.
    - (1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system under subdivision C 4 of this section.
    - (2) For secondary transition, the notice shall also:
      - (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
      - (b) Indicate that the local educational agency will invite the student; and
      - (c) Identify any other agency that will be invited to send a representative.
3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences. If the local educational agency uses an alternative means of meeting participation that results in additional costs, the local educational agency is responsible for those costs. (34 CFR 300.322(c))
4. A meeting may be conducted without a parent(s) in attendance if the local educational agency is unable to convince the parent(s) that they should attend. In this case, the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))
- a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; or
  - c. Detailed records of visits made to the parent's(s)' home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))

6. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.

7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days. (34 CFR 300.322(f))

F. Development, review, and revision of the IEP. (34 CFR 300.324(a))

1. In developing each child's IEP, the IEP team shall consider:

- a. The strengths of the child;
- b. The concerns of the parent(s) for enhancing the education of their child;
- c. The results of the initial or most recent evaluation of the child; and
- d. The academic, developmental, and functional needs of the child.

2. The IEP team also shall: (34 CFR 300.324(a))

- a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;
- b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
- d. Consider the communication needs of the child;
- e. Consider the child's need for benchmarks or short-term objectives;
- f. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

- g. Consider whether the child requires assistive technology devices and services.
3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))
  4. The regular education teacher of a child with a disability, as a member of the IEP team, shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))
    - a. Appropriate positive behavioral interventions and supports and other strategies for the child; and
    - b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.
  5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))
    - a. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or
    - b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.
  6. The IEP team shall consider all factors identified under a free appropriate public education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall provide the parent(s) with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81-170 C.
- G. Content of the individualized education program. The IEP for each child with a disability shall include:
1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))
    - a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.
    - b. The present level of performance shall directly relate to the other components of the IEP.
  2. A statement of measurable annual goals, including academic and functional goals designed to: (34 CFR 300.320(a)(2))

- a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and
  - b. Meet each of the child's other educational needs that result from the child's disability.
3. If determined appropriate by the IEP team, as outlined in subdivision F.2., a description of benchmarks or short-term objectives. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. (34 CFR 300.320(a)(2))
  - a. The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives.
4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (34 CFR 300.320(a)(4))
  - a. To advance appropriately toward attaining the annual goals;
  - b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.
5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section. (34 CFR 300.320(a)(5))
6. The following information concerning state and divisionwide assessments shall be included: (34 CFR 300.320(a)(6))
  - a. A statement of any individual appropriate accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;
  - b. If the IEP team determines that the child must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment), a statement of:
    - (1) Why the child cannot participate in the regular assessment;
    - (2) Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment; and

- (3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
  - c. A statement that the child shall participate in either a state assessment for all children that is part of the state assessment program or the state's alternate assessment;
  - d. A statement of any individual appropriate accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;
  - e. If the IEP team determines that the child must take an alternate assessment instead of a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:
    - (1) Why the child cannot participate in the regular assessment;
    - (2) Why the particular alternate assessment selected is appropriate for the child; and
    - (3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. (34 CFR 300.320(a)(7))
8. A statement of: (34 CFR 300.320(a)(3))
- a. How the child's progress toward the annual goals will be measured; and
  - b. When periodic reports on the progress the child is making toward meeting the annual goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, and at least as often as parents are informed of the progress of their children without disabilities.
9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))
- a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.
  - b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§1431 et seq.) including:
    - (1) A statement regarding natural environments, and
    - (2) A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
  - c. These components of the child's IFSP may be incorporated into the child's IEP.
10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))

a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include age-appropriate:

(1) measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(2) transition services, including courses of study needed to assist the child in reaching those goals. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements in subdivision 10.a. of this subsection, the IEP shall also include a statement, if appropriate, of interagency responsibilities or any linkages.

c. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student and parent(s) have been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR 300.320(c))

H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.

2. All requirements regarding IEP development, review, and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment

requirements to graduate with a modified standard, standard, or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.

3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:

- a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.
- b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.
- c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

**8VAC20-81-120. Children who transfer.**

A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to a local educational agency in Virginia within the same school year are subject to the following provisions. (34 CFR 300.323(e), (f), and (g))

1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.

- a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.
- b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.

2. The new local educational agency shall provide a free appropriate public education to the child, including ensuring that the child has available special education and related services, in consultation

with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:

- a. Adopts and implements the child's IEP from the previous local educational agency with the parent's consent; or
- b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP with the parent's consent that meets the requirements in this chapter.

3. The new local educational agency may develop and implement an interim IEP with the parent's consent while obtaining and reviewing whatever information is needed to develop a new IEP.

4. If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.

B. The new local educational agency shall provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.

C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.

1. During the evaluation period, child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.

2. The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter.

D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local educational agency, the new local educational agency shall review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team is responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new local educational agency from the former Comprehensive Services Act team. (The CSA Implementation Manual)

**8VAC20-81-130. Least restrictive environment and placements.**

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure: (34 CFR 300.114)

- a. That to the maximum extent appropriate, children with disabilities, aged two to 21, inclusive, including those in public or private institutions or other care facilities, are educated with children without disabilities; and
- b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic and extracurricular services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. The local educational agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings. (See also 8VAC20-81-100 H.) (34 CFR 300.117)

3. For children placed by local school divisions in public or private institutions or other care facilities, the local educational agency shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

B. Continuum of alternative placements. (§22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, aged two to 21, inclusive, for special education and related services.

2. The continuum shall:

- a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and
- b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular education class placement. The continuum includes integrated service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities is acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

C. Placements. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131); 34 CFR 300.116)

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team shall revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

**8VAC20-81-140. Placement of children at the Virginia School for the Deaf and the Blind at Staunton.**

A. Placements are made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton(Virginiaschool). The Virginia school shall determine if the student meets the admission criteria of the Virginia school. (§22.1-348 of the Code of Virginia)

B. When an eligible child is placed in the Virginiaschool, the local school division is responsible for ensuring compliance with the requirements of this chapter.

C. For students who are residential students, the Virginia school is responsible for transportation. For students who are day students, the placing local school division is responsible for transportation to and from the school. (§22.1-347 C of the Code of Virginia)

**8VAC20-81-150. Private school placement.**

A. Private school placement by a local school division or Comprehensive Services Act team.

1. When a child with a disability is placed by a local school division or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private special education school or facility that is licensed or has a certificate to operate, the local school division is responsible for ensuring compliance with the requirements of this chapter, including participation in state and divisionwide assessments. The local school division shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in a private school or facility. (34 CFR 300.325(c))

2. Before a local school division places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the local school division shall initiate and conduct a meeting in accordance with 8VAC20-81-110 to develop an IEP for the child. The local school division shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a))

3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, the local school division shall ensure that a representative of the private school or facility attends the IEP meeting. If the representative cannot attend, the local school division shall use

other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a)(2))

4. After a child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division. (34 CFR 300.325(b)(1))

5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent(s) and a local school division representative: (34 CFR 300.325(b)(2))

- a. Are involved in any decision affecting the child's IEP;
- b. Agree to any proposed changes in the program before those changes are implemented; and
- c. Are involved in any meetings that are held regarding reevaluation.

6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with the local school division. (34 CFR 300.325(c))

7. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter are extended to the child. (34 CFR 300.101)

8. If the parent(s) requests a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent(s) and the local educational agency prior to placement by the Comprehensive Services Act team. (34 CFR 300.2(c))

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children in accordance with the Code of Virginia. (§22.1-218.1 of the Code of Virginia)

**B. Placement of children by parents if a free appropriate public education is at issue.**

1. Local school divisions are not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local school division made a free appropriate public education available to the child and the parent(s) elected to place the child in a private school or facility. (34 CFR 300.148(a))

2. Disagreements between a parent(s) and a local school division regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8VAC20-81-210. (34 CFR 300.148(b))

3. If the parent(s) of a child with a disability, who previously received special education and related services under the authority of a local school division, enrolls the child in a private preschool,

elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a special education hearing officer may require the local school division to reimburse the parent(s) for the cost of that enrollment if the court or the special education hearing officer finds that the local school division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a special education hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by the local school division. (34 CFR 300.148(c))

4. The cost of reimbursement described in this section may be reduced or denied: (34 CFR 300.148(d))

a. If:

(1) At the most recent IEP meeting that the parent(s) attended prior to removal of the child from the public school, the parent(s) did not inform the IEP team that they were rejecting the placement proposed by the local school division to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(2) At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent(s) did not give written notice to the local school division of the information described above;

b. If, prior to the parent's(s') removal of the child from the public school, the local school division informed the parent(s), through proper notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) did not make the child available for the evaluation; or

c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s).

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's(s') failure to provide the notice to the local school division if: (34 CFR 300.148(e))

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent(s) from providing the notice; or

d. The parent(s) had not received notice of the notice requirement in this section.

C. Parentally placed private school children with disabilities. The provisions of this section apply to children with disabilities who are enrolled by their parent(s) in private schools.

1. The following definitions are applicable for purposes of this subsection.

a. The term "private school" includes:

- (1) Private, denominational, or parochial schools in accordance with §22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
- (2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
- (3) Students who are home-tutored in accordance with §22.1-254 of the Code of Virginia; or
- (4) Students who receive home instruction in accordance with §22.1-254.1 of the Code of Virginia.

b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. (34 CFR 300.13)

c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12. (34 CFR 300.36)

2. Child find. (§22.1-254.1 of the Code of Virginia; 34 CFR 300.130, 34 CFR 300.131(a) and (b), 34 CFR 300.132(a) and 34 CFR 300.134(a))

a. Each school division shall locate, identify, and evaluate all children with disabilities who are parentally placed in private schools located in the school division. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.

b. Each local school division shall consult with appropriate representatives of the private schools and representatives of parents of parentally-placed private school children with disabilities on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:

- (1) How parentally placed private school children suspected of having a disability can participate equitably; and
- (2) How parents, teachers, and private school officials will be informed of the process.

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

- (1) The equitable participation of parentally placed private school children; and
- (2) An accurate count of these children.

3. Services plan. Each local school division shall ensure that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part. (34 CFR 300.132(b))

4. Expenditures. (34 CFR 300.133)

a. To meet the requirement of the Act, each local school division shall spend the following on providing special education and related services to private school children with disabilities:

(1) For children, aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under §1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children with disabilities in its jurisdiction, aged three to 21; and

(2) For children, aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under §1419 of the Act as the number of privately placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by the school division, is to the total number of children with disabilities in its jurisdiction, aged three to five.

(3) If a local school division has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, the local school division shall obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

(4) Local educational agencies may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision.

b. In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, the local school division, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local school division.

c. After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted on a date between October 1 and December 1 of each year as determined by the Superintendent of Public Instruction or designee. The child count shall be used to determine the amount that the local school division shall spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.

d. Expenditures for child find activities, including evaluation and eligibility, described in 8VAC20-81-50 through 8VAC20-81-80, may not be considered in determining whether the local school division has met the expenditure requirements of the Act.

e. Local school divisions are not prohibited from providing services to parentally placed private school children with disabilities in excess of those required by this section.

5. Consultation.

a. The local school division shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. This includes: (34 CFR 300.134(a), (c), and (d))

(1) How the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(2) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;

(3) The types of services, including direct services and alternate service delivery mechanisms;

(4) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and

(5) How and when those decisions will be made, including how parents, teachers and private school officials will be informed of the process.

b. If the local school division disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local school division shall provide to the private school officials a written explanation of the reasons why the local school division chose not to provide services directly or through a contract. (34 CFR 300.134(e))

c. Following consultation, the local school division shall obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the local school division shall forward the documentation of the consultation process to the Virginia Department of Education. (34 CFR 300.135)

d. A private school official has the right to submit a complaint to the Virginia Department of Education that the local school division: (34 CFR 300.136)

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by the local school division and the appropriate documentation. (34 CFR 300.136)

(1) If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.

(2) The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.

6. Equitable services determined. (34 CFR 300.137)

a. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

b. Decisions about the services that will be provided to the parentally placed private school children with disabilities are made in accordance with the consultation process under subdivision 5 of this subsection and a services plan.

c. The local school division shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

d. The local school division shall:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

7. Services provided. (34 CFR 300.138 and 34 CFR 300.132(b))

a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to these children do not have to meet the requirements for highly qualified special education teachers.

b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each parentally placed private school child with a disability who has been designated to receive services under this subsection shall have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.

(2) The services plan, to the extent appropriate, shall meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.

e. The services shall be provided:

(1) By employees of a local school division; or

(2) Through contract by the local school division with an individual, association, agency, organization, or other entity.

f. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

8. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law. (34 CFR 300.139(a))

9. Transportation. (34 CFR 300.139(b))

a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability shall be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school or to the child's home depending on the timing of the services.

b. Local school divisions are not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.

10. Procedural safeguards, due process, and complaints. (34 CFR 300.140)

a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that a local school division has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally placed private school children with disabilities.

c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8VAC20-81-200.

d. The dispute resolution options described in subdivisions 10 b and 10 c of this subsection apply to the local educational agency in which the private school is located. (34 CFR 300.140(b)(2))

11. Separate classes prohibited. A local school division may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools. (34 CFR 300.143)

12. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school. (34 CFR 300.141)

13. Use of public school personnel. A local school division may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally placed private school children with disabilities and if those services are not normally provided by the private school. (34 CFR 300.142(a))

14. Use of private school personnel. A local school division may use funds available under the Act to pay for the services of an employee of a private school to provide services to a parentally placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control. (34 CFR 300.142(b))

15. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. (34 CFR 300.144)

a. A local school division shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Act for the benefit of parentally placed private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. The local school division shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.

16. Reporting requirements. Each local school division shall maintain in its records, and provide to the Virginia Department of Education, the following information related to parentally placed private school children: (34 CFR 300.132(c))

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

**8VAC20-81-160. Discipline procedures.**

A. General. (§22.1-277 of the Code of Virginia; 34 CFR 300.530(a); 34 CFR 300.324(a)(2)(i))

1. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures.

2. In the event that the child's behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:

a. developing goals and services specific to the child's behavioral needs, or

b. conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child's behavioral needs.

3. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.

a. In reviewing the disciplinary incident, school personnel may review the child's IEP and any behavioral intervention plan, and/or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.

b. School personnel may convene an IEP team for this purpose.

**B. Short-term removals.**

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10 cumulative school days in a school year. (34 CFR 300.530(b))

a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.

b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C of this section apply.

(1) The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.

(2) These removals only constitute a change in placement if the local educational agency determines there is a pattern.

2. Services during short-term removals.

a. The local educational agency is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed. (34 CFR 300.530(b)(2))

b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations. (34 CFR 300.530(b)(2))

c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC §1412(a)(16)(A))

**C. Long-term removals.**

1. A long-term removal is for more than 10 consecutive school days; (34 CFR 300.530; 34 CFR 300.536) or

2. The child has received a series of short-term removals that constitutes a pattern:
  - a. Because the removals cumulate to more than 10 school days in a school year;
  - b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and
  - c. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
3. The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings. (34 CFR 300.530(a) and (b) and 34 CFR 300.536)
4. On the date on which the decision is made to long-term remove the student because of a violation of a code of student conduct, the local educational agency shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards. (34 CFR 300.530(h))
5. Special circumstances. (34 CFR 300.530(g))
  - a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:
    - (1) The child carries a weapon to or possesses a weapon at school, on school premises or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or
    - (2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or
    - (3) The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.
  - b. For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.
6. Services during long-term removals.
  - a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to: (34 CFR 300.530(d))
    - (1) Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and

(3) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC §1412(a)(16)(A))

c. The IEP team determines the services needed for the child with a disability who has been long-term removed. (34 CFR 300.530(d)(5) and 34 CFR 300.531)

D. Manifestation determination. (34 CFR 300.530(c), (e), (f), and (g))

1. Manifestation determination is required if the local educational agency is contemplating a removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.

2. The local educational agency, the parent(s), and relevant members of the child's IEP team, as determined by the parent and the local educational agency, constitute the IEP team that shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made.

3. The IEP team shall review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent(s).

4. The IEP team then shall determine the conduct to be a manifestation of the child's disability:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.

5. If the IEP team determines that the local educational agency failed to implement the child's IEP, the local educational agency shall take immediate steps to remedy those deficiencies.

6. If the IEP team determines that the child's behavior was a manifestation of the child's disability, the IEP team shall:

a. Conduct a functional behavioral assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child;

(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

(2) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B. if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or

b. If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior; and

c. Return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change in placement as part of the modification of the behavioral intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C.5. a of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45-day period.

7. If the IEP team determines that the child's behavior was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C 6 a of this section.

E. Appeal. (34 CFR 300.532(a) and (c))

1. If the child's parent(s) disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent(s) may request an expedited due process hearing.

2. A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due process hearing.

3. The local educational agency is responsible for arranging the expedited due process in accordance with the Virginia Department of Education's hearing procedures at 8VAC20-81-210.

a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.

b. The special education hearing officer shall make a determination within 10 school days after the hearing.

c. Unless the parent(s) and the local educational agency agree in writing to waive the resolution meeting, or agree to use the mediation process,

(1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.

d. The decisions on expedited due process hearings are appealable consistent with 8VAC20-81-210.

F. Authority of the special education hearing officer. (34 CFR 300.532(a) and (b))

1. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is substantially likely to result in injury to self or others.

2. The special education hearing officer under 8VAC20-81-210 may:

a. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of subsections C and D of this section, or that the child's behavior was a manifestation of the child's disability; or

b. Order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.

3. A local educational agency may ask the special education hearing officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others.

G. Placement during appeals. (34 CFR 300.533)

1. The child shall remain in the interim alternative educational setting pending the decision of the special education hearing officer, or

2. Until the expiration of the time for the disciplinary period set forth in this section, whichever comes first, unless the parent and the local educational agency agree otherwise.

H. Protection for children not yet eligible for special education and related services. (34 CFR 300.534)

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct of the local educational agency may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- (a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;
  - (b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or
  - (c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.
3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:
- (a) The parent of the child has not allowed a previous evaluation of the child or has refused services; or
  - (b) The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.
4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.
5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.
- a. Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.
  - b. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent(s), the local educational agency shall provide special education and related services as required for a child with a disability who is disciplined.
- I. Referral to and action by law enforcement and judicial authorities. (34 CFR 300.535)
- 1. Nothing in this chapter prohibits a local educational agency from reporting a crime by a child with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.
  - 2. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with

requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150).

J. Information on disciplinary actions. (34 CFR 300.229)

1. The Virginia Department of Education requires that local educational agencies include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child.
2. Local educational agencies are responsible for transmitting the statement to the Virginia Department of Education upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.
3. The statement may include:
  - a. A description of any behavior engaged in by the child who required disciplinary action;
  - b. A description of the disciplinary action; and
  - c. Any other information that is relevant to the safety of the child and other individuals involved with the child.
4. If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

**8VAC20-81-170. Procedural safeguards.**

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:
  - a. The parent(s) of a child with a disability shall be afforded an opportunity to:
    - (1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.
    - (2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.
  - b. Parent participation in meetings.
    - (1) Each local educational agency shall provide notice to ensure that the parent(s) of a child with a disability has the opportunity to participate in meetings described in subdivision 1.a.(2) of this

subsection, including notifying the parent(s) of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

- (a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;
- (b) Inform the parent(s) that at their discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;
- (c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and
- (d) Inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Each local educational agency shall ensure that a parent(s) of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent(s) if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational

placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 c. (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The parent(s) of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent(s) of a child with a disability, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense. (34 CFR 300.502(b) and (e))

a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by the local educational agency.

b. If the parent(s) requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.

c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.

d. If the parent(s) requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner,

shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))

- a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding the provision of a free appropriate public education to the child; and
- b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.

4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d))

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the parent(s) of a child with a disability within a reasonable time before the local educational agency: (34 CFR 300.503(a))

- a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or
- b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2. The notice shall include: (34 CFR 300.503(b))

- a. A description of the action proposed or refused by the local educational agency;
- b. An explanation of why the local educational agency proposes or refuses to take the action;
- c. A description of any other options the IEP team considered and the reasons for the rejection of those options;
- d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;
- e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;
- f. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the parent(s) to contact in order to obtain assistance in understanding the provisions of this section.

3. a. The notice shall be: (i) written in language understandable to the general public; and (ii) provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the parent(s) is not a written language, the local educational agency shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;

(2) The parent(s) understand the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504)

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability shall be given to the parent(s) by the local educational agency only one time a school year, except that a copy shall be given to the parent(s) upon:

a. Initial referral for or parent request for evaluation;

b. If the parent requests an additional copy;

c. Receipt of the first state complaint during a school year;

d. Receipt of the first request for a due process hearing during a school year; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct.

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but the local educational agency does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. The local educational agency shall offer the parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision 1.

3. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

- e. Opportunity to present and resolve complaints through the due process procedures;
- f. The availability of mediation;
- g. The child's placement during pendency of due process proceedings;
- h. Procedures for students who are subject to placement in an interim alternative educational setting;
- i. Requirements for unilateral placement by parents of children in private schools at public expense;
- j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- k. Civil actions, including the time period in which to file those actions;
- l. Attorneys' fees; and
- m. The opportunity to present and resolve complaints through the state complaint procedures, including:
  - (1) The time period in which to file a complaint;
  - (2) The opportunity for the local educational agency to resolve the complaint; and
  - (3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.
- 4. The notice required under this subsection shall meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

- 1. Required parental consent. Informed parental consent is required before:
  - a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))
  - b. An initial eligibility determination or any change in categorical identification;
  - c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))
  - d. Any revision to the child's IEP services;
  - e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;
  - f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;
  - g. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)

- h. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))
2. Parental consent not required. Parental consent is not required before:
- a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))
  - b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent(s) of all children; (34 CFR 300.300(d)(1))
  - c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)
  - d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals and is included in the child's IEP;
  - e. A teacher's or related service provider's observations or ongoing classroom evaluations;
  - f. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if: (34 CFR 300.300(a)(2))
    - (1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent(s);
    - (2) The parent's rights have been terminated; or
    - (3) The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.
3. Revoking consent. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.
4. Refusing consent.
- a. If the parent(s) refuses consent for initial evaluation or a reevaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))
  - b. If the parent(s) refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3) and (4))
    - (1) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(2) The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

c. If the parent(s) of a parentally-placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency: (34 CFR 300.300(d)(4))

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.

d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. (34 CFR 300.300(d)(3))

#### 5. Withholding consent.

a. If the parent(s) fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond. (34 CFR 300.300(c)(2))

c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))

7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))

8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; and
- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational agency using private insurance to pay for services required under this chapter, shall provide notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. The local educational agency shall permit the parent(s) to inspect and review any education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been provided a copy of a judicial order or decree, or other legally-binding documentation, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)
3. Record on more than one child. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)
4. List of types and locations of information. Each local educational agency shall provide a parent(s) on request a list of the types and locations of education records collected, maintained, or used by the local educational agency. (34 CFR 300.616)
5. Fees. (34 CFR 300.617)
  - a. Each local educational agency may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.
  - b. A local educational agency may not charge a fee to search for or to retrieve information under this section.
  - c. A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E.7.
6. Amendment of records at parent's request. (34 CFR 300.618)
  - a. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.
  - b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7 of this subsection.
7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR 300.619)
8. Results of hearing. (34 CFR 300.620)

a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC §1232g; 34 CFR 300.621)

a. The local educational agency may:

(1) develop local procedures for such a hearing process; or

(2) obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.

10. Consent. (34 CFR 300.32; 34 CFR 300.622)

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC §1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational

agency where the private school is located, and officials in the local educational agency where the parent(s) resides.

11. Safeguards. (34 CFR 300.623)

- a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- b. Each local educational agency shall ensure that electronic communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.
- c. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
- d. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.
- e. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. (34 CFR 300.624)

- a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.
- b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.
- c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

H. Electronic mail. If the local educational agency makes the option available, parent(s) of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)

I. Electronic signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. (Chapter 42.1 (§59.1-479 et seq.) of Title 59.1 of the Code of Virginia)

J. Audio and Video Recording.

1. The local educational agency shall permit the use of audio recording devices at meetings convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or revise the child's IEP under 8VAC20-81-110 F.; and to review discipline matters under 8VAC20-81-160 D. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent(s) shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes a part of the child's educational record.
2. The local educational agency may have policies that prohibit, limit, or otherwise regulate the use of:
  - a. video recording devices at meetings convened pursuant to this chapter; or
  - b. audio or video recording devices at meetings other than those meetings identified in subdivision 1. of this subsection.
3. These policies shall:
  - a. stipulate that the recordings become part of the child's educational record;
  - b. ensure that the policy is uniformly applied; and
  - c. if the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

***8VAC20-81-180. Transfer of rights to students who reach the age of majority.***

A. All rights accorded to the parent(s) under the Act transfer to the student upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution. (34 CFR 300.520)

B. Notification.

1. The local educational agency shall notify the parent(s) and the student of the following: (34 CFR 300.520)
  - a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and
  - b. That procedures exist for appointing the parent(s) or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout the student's

eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection C of this section.

2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student and parent(s) have been informed of the rights that will transfer to the student on reaching the age of 18. (34 CFR 300.320(c))
3. The local educational agency shall provide any further notices required under the Act to both the student and the parent(s).
4. The local educational agency may continue to invite the parent(s), as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.
5. The adult student may invite the student's parent(s) to participate in meetings where decisions are being made regarding the student's educational program.

C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Act shall transfer to the adult student, unless one of the following actions has been taken:

1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
2. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;
3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures: (34 CFR 300.520(b))
  - a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Supreme Court of Virginia; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.

c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent shall be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of local educational agencies. Challenges shall be provided in writing to the local educational agency's administrator of special education who then shall notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or

4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with mental retardation in accordance with §37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

D. If the local educational agency receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this section, the local educational agency shall designate the parent(s) of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

1. If the parent(s) or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:

- a. An adult brother or sister;
- b. An adult aunt or uncle; or
- c. A grandparent.

2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

**8VAC20-81-190. Mediation.**

A. Each local educational agency shall ensure that the parent(s) of a child with a disability are informed of the option of mediation to resolve disputes involving any matter arising under Part B of the Act, including the identification, evaluation, or educational placement and services of the child, the provision

of a free appropriate public education to the child, and matters arising prior to the filing of a state complaint or request for a due process hearing. Mediation is available to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent. (§22.1-214 B of the Code of Virginia; 34 CFR 300.506(a))

B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is: (§22.1-214 B of the Code of Virginia; 34 CFR 300.506(b)(1))

1. Voluntary on the part of both the local educational agency and parent;
2. Not used to deny or delay a parent's(s') right to a due process hearing or to deny any other rights afforded under the Act; and
3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

C. The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under §1471 or 1472 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))

D. In accordance with the Virginia Department of Education's procedures: (34 CFR 300.506(b)(3) and (4))

1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;
2. The mediator is chosen on a rotation basis; and
3. The Virginia Department of Education bears the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall: (34 CFR 300.506(b)(5) through (b)(8))

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;
2. Conclude with a written legally binding agreement, if an agreement is reached by the parties to the dispute, that:

- a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
  - b. Is signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and
  - c. Is enforceable in any state or federal court of competent jurisdiction.
3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.
- F. An individual who serves as a mediator: (34 CFR 300.506(c))
1. May not be an employee of any local educational agency or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;
  2. Shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and
  3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

**8VAC20-81-200. Complaint resolution procedures.**

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system. (34 CFR 300.151)

B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall: (34 CFR 300.153)

1. Be in writing;
2. Include the signature and contact information for the complainant;
3. Contain a statement that a local educational agency has violated the Act or these special education regulations;
4. Include the facts upon which the complaint is based;
5. If alleging violations with respect to a specific child, include:
  - a. The name and address of the residence of the child;
  - b. The name of the school the child is attending;

c. In the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;

d. A description of the nature of the problem of the child, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

6. Address an action that occurred not more than one year prior to the date the complaint is received;

7. Contain all relevant documents; and

8. Be provided simultaneously to the local educational agency or public agency serving the child.

C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and the local educational agency in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.

D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an investigation to determine whether the local educational agency is in compliance with applicable law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.

a. The notification sent to the local educational agency shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;

(4) Notification of the opportunity for the parties to engage voluntarily in mediation;

(5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:

(a) Written documentation that the complaint has been resolved; or

(b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the parents(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also

simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.

b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completion of the investigation within 60 calendar days.

c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.

2. If a reply from the local educational agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the local educational agency advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.

c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.

4. During the course of the investigation, the Virginia Department of Education shall:

- a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.
  - b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
  - c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.
    - (1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.
    - (2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.
    - (3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.
  - d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:
    - (1) Technical assistance activities;
    - (2) Negotiations; and
    - (3) Corrective actions to achieve compliance.
  - e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.
  - f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the local educational agency to bring it into compliance with applicable timelines.
5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:
- a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and
  - b. Appropriate future provision of services for all children with disabilities.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.

F. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

G. If the local educational agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§22.1-214 E of the Code of Virginia)

I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. (34 CFR 300.151)

**8VAC20-81-210. Due process hearing.**

A. The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local educational agencies with respect to any matter relating to the: (§22.1-214 of the Code of Virginia; 34 CFR §300.121 and 34 CFR §300.507 through 34 CFR §300.518)

1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;
2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
3. Educational placement and services of the child; and
4. Provision of a free appropriate public education to the child.

B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.

C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.

D. The Virginia Department of Education establishes procedures for:

1. Providing Special Education Hearing Officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.

2. Establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases.

a. The Virginia Department of Education shall review annually its current list of Special Education Hearing Officers and determine the recertification status of each hearing officer.

b. Notwithstanding anything to the contrary in this subdivision, individuals on the Special Education Hearing Officers list on the effective date of this regulation shall be subject to the Virginia Department of Education's review of recertification status based on past and current performance.

c. The ineligibility of a Special Education Hearing Officer continuing to serve in this capacity shall be based on the factors listed in subdivision 3.c. of this subsection.

3. Evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers:

a. The Virginia Department of Education shall establish procedures for evaluating Special Education Hearing Officers.

b. The first review of the recertification status of each Special Education Hearing Officer will be conducted within a reasonable time following the effective date of these regulations.

c. In considering whether a Special Education Hearing Officer will be certified or re-certified, the Virginia Department of Education shall determine the number of hearing officers needed to hear special education due process cases, and consider matters related to the Special Education Hearing Officer's adherence to the factors in subdivision H.5. of this section, as well as factors involving the Special Education hearing Officer's:

- (1) Issuing an untimely decision, or failing to render decision within regulatory time frames;
- (2) Unprofessional demeanor;
- (3) Inability to conduct an orderly hearing;
- (4) Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;
- (5) Improper ex parte contacts;
- (6) Violations of due process requirements;
- (7) Mental or physical incapacity;
- (8) Unjustified refusal to accept assignments;
- (9) Failure to complete training requirements as outlined by the Virginia Department of Education;
- (10) Professional disciplinary action;
- (11) Issuing a decision that contains:
  - (a) inaccurate appeal rights of the parents, or
  - (b) no controlling case or statutory authority to support the findings.

d. When a Special Education Hearing Officer has been denied certification or recertification based on the factors in subdivision 3.c. of this section, the Virginia Department of Education shall notify the special Education Hearing Officer and the Office of the Executive Secretary of the Supreme Court of Virginia that the hearing officer is no longer certified to serve as a Special Education Hearing Officer.

(1) Upon notification of denial of certification or recertification, the hearing officer may, within 10 calendar days of the postmark of the letter of notification, request of the Superintendent of Public Instruction, or his designee, reconsideration of the decision. Such request shall be in writing and shall contain any additional information desired for consideration. The Superintendent of Public Instruction, or his designee, shall render a decision within 10 calendar days of receipt of the request for reconsideration. The Virginia Department of Education shall notify hearing officer and Office of the Executive Secretary of the Supreme Court of Virginia of its decision.

4. Reviewing and analyzing the decisions of special education hearing officers, and the requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.

E. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507(a) and 34 CFR 300.511(e) and (f))

a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or

b. The local educational agency withheld information that it was required to provide under the IDEA.

2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a local educational agency may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))

3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)

a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or

b. Any decision regarding placement under the disciplinary procedures.

4. In circumstances involving disciplinary actions, the local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)

F. Procedure for requesting a due process hearing. (34 CFR 300.504(a)(2), 34 CFR 300.507, 34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.

a. If the local educational agency initiates the due process hearing, the local educational agency shall advise the parent(s) and the Virginia Department of Education in writing of this action.

b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and forward a copy of the request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

- a. The name of the child;
- b. The address of the residence of the child (or available contact information in the case of a homeless child);
- c. The name of the school the child is attending;
- d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
- e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the special education hearing officer within 15 calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.

5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.

6. The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

7. The local educational agency shall upon receipt of a request for a due process hearing, inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. The local educational agency also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

G. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:

- a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or

b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.

2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

H. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:

a. The local educational agency shall contact the Supreme Court of Virginia for the appointment of the special education hearing officer.

b. The local educational agency contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.

2. Upon request, the Virginia Department of Education shall share information on the qualifications of the special education hearing officer with the parent(s) and the local educational agency.

3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.

a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an objection with the Virginia Department of Education. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.

b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request in accordance with the procedures.

c. If a special education hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another special education hearing officer is promptly appointed.

4. A hearing shall not be conducted by a person who:

a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;

b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing

is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer.

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. A special education hearing officer shall:

a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

I. Duration of the special education hearing officer's authority.

1. The special education hearing officer's authority begins with acceptance of the case assignment.

2. The special education hearing officer has authority over a due process proceeding until:

a. Issuance of the special education hearing officer's decision; or

b. The Supreme Court of Virginia revokes such authority by removing or disqualifying the special education hearing officer.

J. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR 300.533)

1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise;

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;

3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;

5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or

6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the child has turned three, the school division

is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

K. Rights of parties in the hearing. (§22.1-214 C of the Code of Virginia; 34 CFR 300.512)

1. Any party to a hearing has the right to:

- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;
- c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and
- e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

- a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and
- b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

- a. A parent(s) involved in a hearing shall be given the right to:
  - (1) Have the child who is the subject of the hearing present; and
  - (2) Open the hearing to the public.
- b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), even though the applicable appeal period has expired.

L. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)

1. Maintain and monitor the due process hearing system and establish procedures for its operation;
2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

3. Develop and disseminate a model form to be used by the parent(s) to give notice in accordance with the contents of the notice listed in subdivision F.2. of this section;
4. Maintain and ensure that each local educational agency maintains a list of persons who serve as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;
5. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information; and
6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated.
7. Ensure that noncompliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

M. Responsibilities of the parent. In a due process hearing, the parent(s) shall: (34 CFR 300.512)

1. Decide whether the hearing will be open to the public;
2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;
3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
4. Provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the special education hearing officer.

N. Responsibilities of the local educational agency. The local educational agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)

1. Maintain a list of the persons serving as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;
2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;
3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s)' first request for a due process hearing in a school year;
4. Inform the parent(s) at the time the request is made of the availability of mediation;
5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;

6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;
7. Make timely and necessary responses to the special education hearing officer;
8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
10. Provide documents and exhibits necessary for the hearing within required timelines;
11. Comply with timelines, orders, and requests of the special education hearing officer;
12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;
13. Forward all necessary communications to the Virginia Department of Education and parties as required;
14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the parent(s) or the local educational agency;
15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed; and
16. Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s) within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.
  - a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.
  - b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.
  - c. The implementation plan:
    - (1) must be based upon the decision of the hearing officer.
    - (2) shall include the revised IEP if the decision affects the child's educational program.
    - (3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.

17. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.

O. Responsibilities of the special education hearing officer. The special education hearing officer shall: (34 CFR 300.511 through 34 CFR 300.513; and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing;

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The special education hearing officer shall send copies of correspondence to the parties or their attorneys;

3. Conduct a prehearing conference via a telephone conference call or in person unless the special education hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;

4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference;

5. At the prehearing stage:

a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case; and

b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute.

c. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court;

6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;
7. Ascertain from the parent(s) whether the hearing will be open to the public;
8. Ensure that the parties have the right to a written or, at the option of the parent(s), an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision;
9. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing;
10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8VAC20-81-220 when the parent(s) or guardian is not available or cannot be located;
11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing;
12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request;
13. Base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations;
14. Report findings of fact and decisions in writing to the parties and their attorneys and the Virginia Department of Education. If the hearing is an expedited hearing, the special education hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held;
15. Include in the written findings:
  - a. Findings of fact relevant to the issues that are determinative of the case;
  - b. Legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;
  - c. An explanation of the basis for the decision for each issue that is determinative of the case; and
  - d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision;
16. Subject to the procedural determinations described in subdivision O 17 of this subsection, the decision made by a special education hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education;

17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

- a. Impeded the child's right to a free appropriate public education;
- b. Significantly impeded the parent's(s') opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
- c. Caused a deprivation of educational benefits.

Nothing in this subdivision shall be construed to preclude a special education hearing officer from ordering a local educational agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536.

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case.

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

P. Authority of the special education hearing officer. The special education hearing officer has the authority to: (§22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;
2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;
3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:
  - a. The special education hearing officer shall rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.
  - b. The special education hearing officer or a party may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.
  - c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;

4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;
5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;
6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;
7. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the special education hearing officer determines that the best interests of the child will be served;
8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8VAC20-81-170;
9. a. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education.
  - b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension;
10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;
11. Set guidelines regarding media coverage if the hearing is open to the public;
12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and
13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

b. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.

c. Once a determination is made, the special education hearing officer may:

(1) Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Q. Timelines for nonexpedited due process hearings. (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.

a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:

(1) Includes a representative of the local educational agency who has decisionmaking authority on behalf of the local educational agency; and

(2) May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.

b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process request.

c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:

(1) The parent and the local educational agency agree in writing to waive the meeting; or

(2) The parent and the local educational agency agree to use the mediation process described in this chapter.

d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.

e. The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting.

## 2. Resolution period.

a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.

b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.

c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.

d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the provision in 8VAC20-81-110 E.4.), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.

e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or

c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:

- a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and
- b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.

5. Agreement review period. If the parties execute an agreement pursuant to subdivision 3 of this subsection, a party may void the agreement within three business days of the agreement's execution.

6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision 3 of this subsection:

- a. A final decision is reached in the hearing; and
- b. A copy of the decision is mailed to each of the parties.

7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.

9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.

R. Timelines for expedited due process hearings. (34 CFR 300.532(c))

1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

2. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:

- a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint; and
- b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.

3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

S. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)

1. The costs of an independent educational evaluation ordered by the special education hearing officer, special education hearing officer, court reporters, and transcripts are shared equally by the local educational agency and the Virginia Department of Education.

2. The local educational agency is responsible for its own attorneys' fees.

3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.

4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.

5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8VAC20-81-310.

T. Right of appeal. (34 CFR 300.516)

1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under §1415 of the Act without regard to the amount in controversy.

2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.

3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection J. of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.

4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.

U. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

**8VAC20-81-220. Surrogate parent procedures.**

A. Role of surrogate parent. The surrogate parent appointed in accordance with this section represents the child in all matters relating to the identification, evaluation, or educational placement of the child; or the provision of a free appropriate public education to the child. (34 CFR 300.519(g))

B. Appointment of surrogate parents.

1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

- a. The parent(s) or guardians are allowing relatives or private individuals to act as a parent;
- b. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with §16.1-283, 16.1-277.01, or 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent of the child for the purposes of any special education proceedings; or
- c. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with §63.2-908 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

2. Unless one of the exceptions outlined in subdivision B.1. of this section applies, the local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: (34 CFR 300.519(a))

- a. No parent, as defined in 8VAC20-81-10, can be identified;
- b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent;
- c. The child is a ward of the state and either subdivision 1.a. or 1.b. of this subsection is also met; or
- d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia and either subdivision 1.a. or 1.b. of this subsection is met.

3. The local educational agency shall appoint a surrogate parent as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8VAC20-81-180 C.3. or C.4. and no family member is available to serve as the child's educational representative.
4. If the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child. The appointed surrogate shall meet the requirements of subdivision E.1.c. of this section. (34 CFR 300.519(c))

C. Procedures for surrogate parents.

1. The local educational agency shall establish procedures in accordance with the requirements of this chapter, for determining whether a child needs a surrogate parent. (34 CFR 300.519(b))
2. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee within 30 calendar days of the determination that a surrogate parent is necessary. (34 CFR 300.519(b) and (h))
  - a. The appointment having been effected, the local educational agency shall notify in writing:
    - (1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
    - (2) The surrogate parent-appointee; and
    - (3) The person charged with responsibility for the child.
  - b. The surrogate parent serves for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.
  - c. If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.
  - d. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.
3. Each local educational agency shall establish procedures that include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

- a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8VAC20-81-180;
- b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;
- c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
- d. The parent(s), whose whereabouts were previously unknown, are now known and available; or
- e. The appointed surrogate parent is no longer eligible according to subsection E of this section.

D. Identification and recruitment of surrogate parents.

1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.
2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate eligibility. Other factors that warrant the local educational agency's attention include:
  - a. Consideration of the appointment of a relative to serve as surrogate parent;
  - b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately; and
  - c. The appropriateness of the child's participation in the selection of the surrogate parent.

E. Qualifications of surrogate parents. (34 CFR 300.519(d), (e), and (f))

1. The local educational agency shall ensure that a person appointed as a surrogate:
  - a. Has no personal or professional interest that conflicts with the interest of the child;
  - b. Has knowledge and skills that ensure adequate representation of the child;
  - c. Is not an employee of the Virginia Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child; and
  - d. Is of the age of majority.
2. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.
3. If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a

temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate shall otherwise meet the qualifications of a surrogate, and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.

F. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter. (34 CFR 300.519(g)).

**8VAC20-81-230. Local educational agency administration and governance.**

A. The local educational agency shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.

B. Plans, applications, and reports. (§22.1-215 of the Code of Virginia; 34 CFR 300.200 and 34 CFR 300.212)

1. The local educational agency shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:

- a. Assurances that the local educational agency has in effect policies and procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;
- b. A report indicating the extent to which the annual plan for the preceding period has been implemented;
- c. Budgets outlining the use of the federal funds; and
- d. Any revisions to the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision G 2 of this section.

2. Prior to submission to the Virginia Department of Education, the annual plan shall be reviewed by the local school division's local advisory committee, and approved by the local school board. State-operated programs and the Virginia School for the Deaf and Blind at Staunton shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.

3. The local educational agency shall ensure that the annual plan, and all required special education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.

C. Provision of or payment for special education and related services. (34 CFR 300.154(b))

1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.

2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21 of 8VAC20-81-20.

D. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent.

1. Membership.

- a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.
- b. The committee shall include one teacher.
- c. Additional local school division personnel shall serve only as consultants to the committee.

2. The functions of the local advisory committee shall be as follows:

- a. Advise the local school division of needs in the education of children with disabilities;
- b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;
- c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;
- d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;
- e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and

f. Participate in the review of the local school division's annual plan, as outlined in subdivision B 2 of this section.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

4. Committee meetings shall be held at least four times in a school year and shall be open to the public.

E. Regional special education programs. (§22.1-218 of the Code of Virginia; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.

2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.

F. Transition from infant and toddler programs to early childhood special education programs. (34 CFR 300.124)

1. Children who are participating in early intervention programs under Part C of the Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with §1437(a)(9) of the Act, and its federal implementing regulations.

3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:

- a. The child meets the Part B eligibility criteria; and
- b. An IEP has been developed and signed by the parent(s).

G. Programs for children with disabilities in regional or local jails. (34 CFR 300.101 and 34 CFR 300.102)

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.

2. Each local school division with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of any revisions to this agreement shall be submitted with the annual plan specified in subsection B of this section.

H. Each local educational agency shall cooperate with the U.S. Department of Education's efforts under §1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)

I. Early Intervening Services. Each local educational agency shall implement early intervening services in accordance with the provisions of 8VAC20-81-260 H. (34 CFR 300.226)

J. Access to instructional materials.

1. Each local educational agency shall ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))

2. To meet the requirements of subdivision 1 of this subsection for blind persons or other persons with print disabilities, the local educational agency may coordinate with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))

a. The local educational agency shall provide an assurance to the Virginia Department of Education that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.

b. Each local educational agency shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.

c. If the local educational agency coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

d. The requirements of subdivision J 2 c of this section shall apply to print instructional materials published after July 19, 2006.

3. Nothing in this subsection relieves a local educational agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))

4. Definitions applicable to this subsection.

a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.

b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2 USC §135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))

(1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;

(2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;

(3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or

(4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

c. The term "competent authority" is defined as follows: (2 USC §135a; 36 CFR 701.6(b)(2))

(1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.

d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or the local educational agency for use by students in the classroom. (20 USC §1474(e)(3)(C))

e. The term "specialized formats" has the meaning given the term in 17 USC §121(d)(3), and means Braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC §1474(e)(3)(D); 34 CFR 300.172(e))

## **Part IV Funding**

### ***8VAC20-81-240. Eligibility for funding.***

A. Each local school division and state-operated program shall maintain current policies and procedures and supporting documentation to demonstrate compliance with the Act and the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures shall be made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance. (34 CFR 300.201; 34 CFR 300.220)

B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

### ***8VAC20-81-250. State funds for local school divisions.***

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality. (Chapter 13.2 (§22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia)

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement is made in the year following delivery of instruction. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

C. Children with disabilities enrolled in regional special education programs: (Virginia Appropriations Act; §22.1-218 of the Code of Virginia)

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the Superintendent of Public Instruction or designee.

2. Such reimbursement shall be in lieu of other state education funding available for each child.

D. Applicability of least restrictive environment and FAPE provision in state-funded placements. No state-funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise result in a failure to provide a child with a disability a free appropriate public education. (34 CFR 300.114(b))

E. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions are reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails. (Virginia Appropriation Act)

F. Funds under the Comprehensive Services Act for At-Risk Youth and Families. (§§2.2-5211 through 2.2-5212 of the Code of Virginia)

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a special education hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

G. Reimbursement shall be made for the education of children with disabilities who: (§22.1-101.1 B and C of the Code of Virginia)

1. Have been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency;

2. Have been placed in an orphanage or children's home, which exercises legal rights; or

3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child-caring institution or group home licensed in accordance with the Code of Virginia.

**8VAC20-81-260. Federal funds.**

A. In accordance with the provisions of the Act, the Virginia Department of Education disburses the federal funds that are available under Part B of the Act to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. The local educational agency shall submit an annual plan to the Virginia Department of Education describing the use of such funds in accordance with subsection B of 8VAC20-81-230. (34 CFR 300.200; 34 CFR 76.301)

B. Excess costs means those costs that are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student as may be appropriate, and that shall be computed after deducting (34 CFR 300.16, 34 CFR 300.202 and Appendix A)

1. Amounts received under Part B of the Act;

2. Amounts received under Part A of Title I of the ESEA;

3. Amounts received under Parts A and B of Title III of the ESEA; or

4. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1, 2, or 3 of this subsection but excluding any amounts for capital outlay and debt service.

A local educational agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities in state and local funds before funds under Part B of the Act are used. (See 34 CFR Part 300, Appendix A for an example of how excess costs shall be calculated.)

C. A local educational agency complies with the maintenance of effort requirement in establishing its eligibility for an award in a fiscal year if the local educational agency budgets the same total or per capita amount in state and local funds as it spent from the same sources to educate children with disabilities in the most recent prior year for which information is available. (34 CFR 300.203)

D. Part B funds may be used to supplement, but shall not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Act. (34 CFR 300.202 through 34 CFR 300.204)

E. The amount of Part B funds determined to be available for each local educational agency is based upon the formulas specified under the Act. (34 CFR 300.705 and 34 CFR 300.816)

F. A local educational agency may use Part B funds to implement a schoolwide program under §1114 of the ESEA, except that the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency shall ensure that all children with disabilities in schoolwide program schools: (34 CFR 300.206)

1. Receive services in accordance with a properly developed IEP; and

2. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

G. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child. (34 CFR 300.208)

H. Early intervening services. (34 CFR 300.226 and 34 CFR 300.646)

1. Children who are not currently identified as needing special education or related services may need additional academic and behavioral supports to succeed in a general education environment. These supports may be in the form of early intervening services. Early intervening services apply to children in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three.
2. To develop and implement coordinated, early intervening services, which may include interagency financing structures, a local school division may not use more than 15% of the amount the school division receives under Part B of the Act for any fiscal year. The 15% is less any amount reduced by the local school division pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds).
3. In implementing coordinated, early intervening services under this section, a local educational agency may carry out activities that include:
  - a. Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
  - b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
4. Nothing in this section shall be construed to either limit or create a right to a free appropriate public education under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
5. Each local educational agency that develops and maintains coordinated, early intervening services under this section shall annually report to the Virginia Department of Education on:
  - a. The number of children served under this section who received early intervening services; and
  - b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.
6. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

7. The amount of funds expended by a local educational agency for early intervening services shall count toward the maximum amount of expenditures that the local educational agency may reduce when determining compliance with the requirement for maintenance of effort.

8. If the Virginia Department of Education determines significant disproportionality based on race and ethnicity is occurring in a local educational agency in the identification of children with disabilities, or the placement of identified children in a particular educational setting, the local educational agency shall:

- a. Use 15% of its Part B funds to provide comprehensive coordinated early intervening services particularly, but not exclusively, to those groups that were significantly overidentified; and
- b. Publicly report on the revision of policies, practices, and procedures used in the identification and placement of children with disabilities.

I. If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Act that are not needed by the school division to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve. (34 CFR 300.705 and 34 CFR 300.817)

***8VAC20-81-270. Funds to assist with the education of children with disabilities residing in state-operated programs.***

A. State mental health facilities. State funds for education for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

B. State training centers for people with intellectual disabilities. State funds for special education and related services for children with disabilities in state training centers for people with intellectual disabilities are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental

retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

C. State specialized children's hospitals. State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

D. Woodrow Wilson Rehabilitation Center. State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

E. Regional and local juvenile detention homes. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

F. State-operated diagnostic clinics. State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

H. The Virginia School for the Deaf and the Blind at Staunton. State funds are appropriated directly to the school to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the Virginia school shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the Virginia schools. (Virginia Appropriation Act; 34 CFR 300.705)

I. Regional and local jails. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

**8VAC20-81-280. Funding, withholding, and recovery of funds.**

A. The Virginia Department of Education shall disburse funds to local educational agencies for the education of children with disabilities, aged two to 21, inclusive, when they provide documentation of compliance with state and federal laws and regulations. (34 CFR 300.200)

B. If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall provide reasonable notice to the local educational agency that state and federal funds will not be available for reimbursement for special education programs and services. (34 CFR 300.155 and 34 CFR 300.221)

1. The notification shall include the substance of the alleged violation, and the local educational agency shall be given an opportunity to submit a written response; and
2. The local educational agency shall have the right to appeal to the Virginia Board of Education under 8VAC20-81-290.

C. Whenever the Virginia Board of Education, in its discretion, determines that a local educational agency fails to establish and maintain programs of free and appropriate public education that comply with the regulations established by the board, the board may withhold all state and federal funds for the education of eligible children with disabilities and may use the payments that would have been available to such local educational agency to provide special education, directly or by contract, to eligible children with disabilities in such manner as the board considers appropriate. (§22.1-214 E of the Code of Virginia)

D. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8VAC20-81-290, finds that a local educational agency has failed to comply with the state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that local educational agency until it complies with the state and federal laws and regulations. (34 CFR 300.155 and 34 CFR 300.222)

E. If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the local educational agency, the foregoing due process procedures shall apply. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

F. If it is determined that such funds have been erroneously claimed, the Virginia Department of Education shall bill the local educational agency for the amount of funds improperly received and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

G. Any local educational agency in receipt of a notice, as described in subsection C of this section, shall provide public notice to the local educational agency's jurisdiction regarding pendency of the action. (34 CFR 300.222)

**8VAC20-81-290. Appeal of administrative decision regarding funding.**

A. The Virginia Department of Education's recommendation to disapprove local eligibility for funding under the Act, or withhold state and federal funds for special education and related services, may be appealed by a local educational agency. (34 CFR 76.401 and 34 CFR 300.155)

B. The procedures for the appeal of administrative decisions are as follows: (34 CFR 76.401 and 34 CFR 300.155)

1. The local educational agency shall request, in writing, a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;
2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the local educational agency in writing of the date, time, and location of the hearing;
3. The hearing shall be conducted within 15 business days from the date of notification;
4. The hearing shall be conducted by an independent hearing officer in conformance with the provisions of §§2.2-4020 and 2.2-4024 of the Code of Virginia;
5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or the local educational agency;
6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;
7. The hearing officer shall review all pertinent evidence presented and shall render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;
8. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;
9. The decision made by the hearing officer shall be final unless an appeal is requested by a local educational agency;
10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department General Administrative Regulations; and

11. Notice of appeal shall be filed within 20 days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

**8VAC20-81-300. Use of public and private insurance.**

A. Children with disabilities who are covered by public benefits or insurance. (34 CFR 300.154(d))

1. A local educational agency may use Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public benefits or insurance program except as provided in subdivision 2 of this subsection.

2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. Shall provide notice to the parent(s) that the local educational agency:

(1) May not require the parent(s) to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education;

(2) May not require the parent(s) to incur any out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with subsection C of this section may pay the cost that the parent(s) otherwise would be required to pay; and

(3) May not use a child's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(c) Increase premiums or lead to the discontinuation of benefits insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

b. Shall obtain informed parental consent each time that access to public benefits or insurance is sought, including parental consent to release educational information to the public benefits of insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

c. Shall provide notice to the parent(s) that refusal to allow access to their public benefits or insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

B. Children with disabilities who are covered by private insurance. (34 CFR 300.154(e))

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, a local educational agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the local educational agency proposes to access a parent's private insurance proceeds, it shall:

- a. Obtain informed parental consent, including parental consent to release educational information to the private insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and
- b. Inform the parent(s) that the refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

C. Use of Part B funds. (34 CFR 300.154(f))

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent(s) would incur a cost for a specified service required under this chapter to ensure a free appropriate public education, the local educational agency may use its Part B funds under the Act to pay for the service.

2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's benefits or insurance (e.g., deductible or co-pay amounts).

D. Proceeds from public or private insurance. (34 CFR 80.25 and 34 CFR 300.154(g))

1. Proceeds from public benefits or insurance or private insurance is not treated as program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds are not considered state or local funds for purposes of the maintenance of effort provisions.

E. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public benefits or insurance program by federal law, regulations, or policy under title XIX or title XXI of the Social Security Act, or any other public benefits or insurance program. (34 CFR 300.154(h))

**8VAC20-81-310. Attorneys' fees.**

A. In any action or proceeding brought under §1415 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs: (34 CFR 300.517(a))

1. To the prevailing party who is the parent(s) of a child with a disability;
2. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
3. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent, or against the parent, if the parent's request for a due process hearing, or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

B. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under §1415 and Subpart E of the Act. This section does not preclude a local educational agency from using funds under the Act for conducting an action or proceeding under §1415 of the Act. (34 CFR 300.517(b))

C. A court awards reasonable attorneys' fees under §1415 of the Act consistent with the following: (34 CFR 300.517(c))

1. Determination of amount of attorneys' fees. Fees awarded under §1415(i)(3) of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
2. Prohibition of attorneys' fees and related costs for certain services.
  - a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under §1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent(s) if:
    - (1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 calendar days before the proceeding begins;
    - (2) The offer is not accepted within 10 calendar days; and
    - (3) The court or administrative special education hearing officer finds that the relief finally obtained by the parent(s) is not more favorable to the parent(s) than the offer of settlement.

- b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation session.
- c. A resolution session convened in accordance with 8VAC20-81-210 will not be considered:
  - (1) A meeting convened as a result of an administrative hearing or judicial action; or
  - (2) An administrative hearing or judicial action for purposes of this subsection.
- 3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent(s) who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- 4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:
  - a. The parent(s), or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
  - b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
  - c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  - d. The attorney representing the parent(s) did not provide to the local educational agency the appropriate information in the request for a due process hearing in accordance with this chapter.
- 5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the Virginia Department of Education or the local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of §1415 of the Act.

## Part V

### **Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody**

#### ***8VAC20-81-320. Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.***

##### A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education that is comparable to that provided to children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. (§§22.1-7 and 22.1-340 of the Code of Virginia)

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia School for the Deaf and the Blind at Staunton. (§§22.1-7, 22.1-347, and 22.1-348 of the Code of Virginia)

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities. (§22.1-7 of the Code of Virginia)

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Eastern Virginia Medical Center, the Virginia Commonwealth University

Health System Authority, and The University of Virginia Hospitals. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

2. The procedures outlined in 8VAC20-81-230 are applicable to each state board, agency, and institution having children with disabilities in residence and custody. (§22.1-7 of the Code of Virginia)

B. Annual program plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8VAC20-81-230.

1. In addition, the program plan shall include the following:

- a. The educational objectives of the state board, agency, or institution;
- b. Strategies for achieving the educational objectives, including an organized program for staff development;
- c. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;
- d. A system of communication to ensure service continuity in the transition of the student into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia; (§§16.1-293 and 22.1-289 E of the Code of Virginia)
- e. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;
- f. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;
- g. A cooperatively developed procedure for the evaluation of educational personnel; and
- h. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board.

2. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each student to implement the student's IEP.

- a. If a student has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

b. This waiver statement shall document the physical or mental condition of the individual student that requires significant modification of this schedule, and personnel from the following facilities shall file statements of concurrence:

- (1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;
- (2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions -- the Department of Correctional Education;
- (3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton;
- (4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;
- (5) The attending physician -- state medical facilities;
- (6) The detention superintendent or designee -- juvenile detention homes.

3. The Virginia School for the Deaf and the Blind at Staunton shall provide for each age group of children a planned dormitory and a student-life program, including social and daily living skills, recreation, and cultural activities.

C. Staff and facility.

1. Each state board, agency or institution shall assign personnel to the educational program who are appropriately and adequately prepared and trained, including having the knowledge and skills to serve children with disabilities, and as follows: (34 CFR 300.156)

- a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).
- b. Additional education personnel to provide required related services as delineated in the child's IEP. Related services providers must be qualified consistent with the requirements of subdivision 19(a) of 8VAC20-81-20.
- c. Paraprofessionals who are trained and supervised in accordance with the requirements of the Board of Education.

2. Each state board, agency or institution shall staff the educational program as follows:

- a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;

b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

(1) Emotional disturbance - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(3) Mental retardation - one teacher and one paraprofessional for every 10 children;

(4) Severe disability - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(5) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;

(6) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(7) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(8) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(9) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(10) Autism - one teacher for every six children or one teacher and one paraprofessional for every eight children;

(11) Traumatic brain injury - students may be placed in any program, according to the student's IEP;

(12) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;

(13) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children; and

(14) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of students exceeds the bed capacity, then the ratio shall be one teacher for every 12 students based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

3. Each facility shall have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

## Part VI

### Compliance with §504 of the Rehabilitation Act of 1973, as Amended

#### ***8VAC20-81-330. Compliance with §504 of the Rehabilitation Act of 1973, as amended.***

A. Each state-operated program providing educational services to persons of school age and the Virginia School for the Deaf and the Blind at Staunton shall provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan. (34 CFR 104.33)

B. Local educational agencies are required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. In meeting the due process portion of this requirement, local educational agencies may utilize the due process hearing system specified in 8VAC20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability. If this procedure is selected, the local school system is responsible for 100 percent of the reimbursement costs to the special education hearing officer and any other costs incurred and requested by the special education hearing officer or school division. The Virginia Department of Education trains special education hearing officers on 504 requirements. (34 CFR 104.7 and 34 CFR 104.36)

**8VAC20-81-340. Special education caseload staffing requirements.**

Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act.

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	8	6	24
Deaf-blindness	8	6	0
Developmental Delay: age 5-8	10	8	0
Developmental Delay: age 2-5	8 Center-based 10 Combined	12 Home-based and/or Itinerant	
Emotional Disability	10	8	24
Hearing Impairment/Deaf	10	8	24
Learning Disability	10	8	24
Intellectual Disability	10	8	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	8	24
Other Health Impaired	10	8	24
Speech or Language Impairment	NA	NA	68 (Itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services	20 Points (see Figure 2)		

Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

Disability Category	Level II Values		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the time	Values
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental Delay: age 5 - 8	2.0	2.5	1
Emotional Disability	2.0	2.5	1
Hearing Impairment/Deaf	2.0	2.5	1
Learning Disability	2.0	2.5	1
Intellectual Disability	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
Traumatic Brain Injury	2.0	2.5	1



Three schools, warned for the fourth consecutive year, are requesting a rating of conditional accreditation. A history of the schools requesting a rating of Conditionally Accredited for the first year follows:

<b>Division</b>	<b>School Name</b>	<b>Subjects Warned in 2006</b>	<b>Subjects Warned in 2007</b>	<b>Preliminary Data In Subjects Warned in</b>
Danville City Public Schools	Westwood Middle School	Mathematics	Mathematics	Mathematics
Portsmouth City Public Schools	Brighton Manor Elementary School	Mathematics, History, Science	Mathematics, Science	English
Roanoke City Public Schools	William Ruffner Middle School	Mathematics	English, Mathematics, History	English, Mathematics, H

### Summary of Major Elements

Danville City Public Schools, Portsmouth City Public Schools, and Roanoke City Public Schools are requesting ratings of Conditionally Accredited for Westwood Middle School, Brighton Elementary, and William Ruffner Middle School indicating that reconstitution efforts have changed the governance in the three schools. New principals have been employed at Westwood Middle School and William Ruffner Middle School.

<b>School Division</b>	<b>School Name</b>	<b>Governance</b>	<b>Staff</b>	<b>Student Population</b>	<b>Instructional Program</b>
Danville City Public Schools	Westwood Middle School	Primary	Additional		
Portsmouth City Public Schools	Brighton Elementary School	Primary			
Roanoke City Public Schools	William Ruffner Middle School	Primary	Additional		

Data indicating these schools' performance over the last three years is included in Attachment A.

Two of these schools house a sixth- and seventh-grade and continue to be warned in mathematics. Pass rates have demonstrated some improvement as indicated below:

<b>School Division</b>	<b>School Name</b>	<b>Change in Percent Passing Mathematics in 2008 from 2007 (Example: 5 would indicated a pass rate change from 50% to 55%)</b>	
		<b>6<sup>th</sup> Grade</b>	<b>7<sup>th</sup> Grade</b>
Danville City Public Schools	Westwood Middle School	16	6
Roanoke City Public Schools	William Ruffner Middle School	-4	6

The Office of School Improvement has worked closely with these schools to design and implement an oversight committee as a formal mechanism to focus on and improve instruction in the area(s) of warning. These oversight committees share the governance of instruction in the area(s) of warning. Westwood Middle School began implementation of this committee in the 2007-2008 school year. The purpose of the oversight or shared governance committee is to:

1. Serve as a formal mechanism to guide instructional decisions based on data including, but not limited to, formative assessment data, classroom observations and review of lesson plans.
2. Monitor and adjust the school's improvement plan frequently.
3. Provide outside expertise and knowledge in the content area of warning and/or in research-based instructional practices that foster improved student achievement.
4. Align district resources with the needs of the school, including additional help and support from the central office.
5. Share the governance in the instructional area(s) of warning through a formal decision-making process. In these committees, the principal is not the sole instructional decision-maker.

The following table indicates the composition of the committees for each school indicated in the letters requesting ratings of Conditionally Accredited:

<b>School Division</b>	<b>School Name</b>	<b>Outside expertise in area of warning</b>	<b>District curriculum or instructional leader</b>	<b>Principal</b>	<b>Teacher</b>	<b>Outside monitor or facilitator (PASS, ARC*, or University)</b>
Danville City Public Schools	Westwood Middle School	VDOE contractor	Asst. Supt. for Instruction	Principal	Lead Teacher	ARC
Portsmouth City Public Schools	Brighton Manor Elementary School	PASS Coach	Asst. Supt. for Curriculum and Instruction	Principal	Lead Teachers	PASS School
Roanoke City Public Schools	William Ruffner Middle School	PASS Coach	Director of Instruction	Principal	Lead Teachers	PASS School

\*ARC- Academic Review Coordinator or Team Leader

\*\*PASS – Partnership for Achieving Successful Schools

The following table provides an overview of the alternative governance efforts presented in the letters requesting ratings of Conditionally Accredited:

<b>Division</b>	<b>School Name</b>	<b>Overview of Request</b>
Danville City Public Schools	Westwood Middle School	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A new principal was appointed this school year. Continue alternative governance committee from 2007-2008.

<b>Division</b>	<b>School Name</b>	<b>Overview of Request</b>
Portsmouth City Public Schools	Brighton Manor Elementary School	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided.
Roanoke City Public Schools	William Ruffner Middle School	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. Continue alternative governance committee from 2007-2008.

**Recommendations**

The department will provide technical assistance to the schools and divisions through a partnership with the Appalachia Regional Comprehensive Center (ARCC), the Virginia Foundation of Educational Leadership (VFEL), and the Center for Innovation and Improvement (CII). Portsmouth City Public Schools and Roanoke City Public Schools were provided a series of technical assistance opportunities via WebEx last year. Danville City Public Schools will participate in this same series this year. A copy of the evaluation for this project is included as Attachment B. The technical assistance will provide staff with information regarding the district-level indicators that support the rapid improvement of low-performing schools. These indicators are as follows:

1. Community. The district includes civic leaders, community organizations, and churches in the district and school improvement planning and maintains regular communication with them.
2. Achievement Targets. The district sets district, school, and student subgroup achievement targets.
3. Data System. The district ensures that key pieces of user-friendly data are available in a timely fashion at the district, school, and classroom levels.
4. Program Evaluation. The district examines existing school improvement strategies being implemented across the district and determines their value, expanding, modifying, and culling as evidence suggests.
5. Curriculum. The district provides a cohesive district curriculum guide aligned with state standards or otherwise places curricular expectations on the school.
6. Data Training. The district provides the technology, training, and support to facilitate the school's data management needs.
7. Staff Incentives. The district provides incentives for staff who work effectively in hard-to-staff and restructured schools
8. Resource Reallocation. The district regularly reallocates resources to support school, staff, and instructional improvement.
9. Quality Staff. The district recruits, trains, supports, and places personnel to competently address the problems of schools in need of improvement.
10. District Intervention. The district intervenes early when a school is not making adequate progress.
11. Progress Monitoring. The school reports and documents its progress monthly to the superintendent, and the superintendent reports the school's progress to the school board.
12. District Contact. The district designates a central office contact person for the school, and that person maintains close communication with the school and an interest in its progress.

13. District-School Communication. District and school decision makers meet at least twice a month to discuss the school's progress.
14. Professional Development. Professional development is built into the school schedule by the district, but the school is allowed discretion in selecting, training, and consulting that fit the requirements of its improvement/restructuring plan and its evolving needs.
15. Programs and Practices. The improvement/restructuring plan includes research-based, field-proven programs, practices, and models.
16. Vision. The improvement/restructuring plan includes a clear vision of what the school will look like when restructured or substantially improved.
17. Quick Wins. The improvement/restructuring plan focuses on "quick wins," early successes in improvement.
18. School Teams. A team structure is officially incorporated into the school improvement plan and school governance policy.
19. Student Support. The district works with the school to provide early and intensive intervention for students not making progress.
20. Instruction and Performance. The school's Leadership Team regularly looks at school performance data and aggregated classroom observation data and uses that data to make decisions about school improvement and professional development needs.

It is imperative to emphasize not only the shared leadership between the central office and the school, but the importance of shared instructional leadership within the school. In the 2008-2009 school year, the partnership will continue to provide technical assistance with a concentration on continued division-level support and school-level support with a focus on shared instructional leadership. Division staff, principals, school improvement teams, and lead teachers from the three divisions and schools will receive research-based technical assistance throughout the school year prepared by the Center for Innovation and Improvement and delivered by Virginia Foundation of Educational Leadership faculty and VDOE staff on the following rapid improvement leadership indicators. Rapid improvement leaders:

1. Make an action plan so that everyone involved knows specifically what they need to do differently.
2. First concentrate on a very limited number of changes to achieve early, visible wins for the school.
3. Make changes that deviate from organization's norms and rules if necessary to gain visible wins.
4. Implement an action plan in which change is mandatory for all staff, not optional.
5. Replace or redeploy some staff as necessary based on careful examination of skills and readiness for change.
6. Quickly discard tactics that don't work and spend more resources and time on tactics that work.
7. Report progress but keep school's focus on high goals.
8. Motivate others inside and outside the school to contribute to success.
9. Use various tactics to help staff empathize with those they serve and be motivated for change.
10. Work hard to gain the support of trusted influencers among staff and community.
11. Silence critics with speedy success on "quick win" objectives.
12. Personally analyze data about the organization's performance to identify high-priority problems that can be fixed quickly.
13. Set up systems to measure and report interim results often.
14. Share results in open-air meetings to hold all staff accountable for results and to focus on solving problems.

Systems and processes are also necessary for improvement. For this reason, additional technical assistance will be provided by the Center for Innovation and Improvement and delivered by Virginia Foundation of Educational Leadership faculty and VDOE staff to focus on the following systems and processes:

1. Establishing a team structure with specific duties and time for instructional planning.
2. Focusing the principal's role on building leadership capacity, achieving learning goals, and improving instruction.
3. Aligning classroom observations with evaluation criteria and professional development.
4. Engaging teachers in aligning instruction with standards and benchmarks.
5. Engaging teachers in assessing and monitoring student mastery.
6. Engaging teachers in differentiating and aligning learning activities.
7. Assessing student learning frequently with standards-based assessments.
8. Expecting and monitoring sound instruction in a variety of modes.
9. Expecting and monitoring sound homework practices and communication with parents.
10. Expecting and monitoring sound classroom management.

The importance of data cannot be underscored for schools that are chronically underachieving. Using research-based indicators that lead to increased student achievement is imperative for improvement. The department has designed a quarterly reporting instrument that will help divisions and schools monitor critical indicators that are related not only to immediate increases in student achievement, but also to those indicators that are attributed to students not graduating on time.

The following are recommendations for each of the three schools requesting a rating of Conditionally Accredited:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.
4. The division and school will submit the required data profile as specified by the department at least quarterly. This report may be found at <http://www.doe.virginia.gov/VDOE/SchoolImprovement/>.
5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement). Specific recommendations for each school are as follows:

Division	School Name	Recommendations
Danville City Public Schools	Westwood Middle School	Division staff, VDOE contractor, and school staff must meet monthly to discuss the progress in the school's implementation of the school improvement plan and the alignment of state and LEA resources.

<b>Division</b>	<b>School Name</b>	<b>Recommendations</b>
Portsmouth City Public Schools	Brighton Elementary School	Division staff, PASS coach, and school staff must meet monthly to discuss the progress in the school's implementation of the school improvement plan and the alignment of state and LEA resources.
Roanoke City Public Schools	William Ruffner Middle School	Division staff, OSI staff, PASS coach, and school staff must meet monthly to discuss the progress in the school's implementation of the school improvement plan and the alignment of state and LEA resources.

Attachment A provides a summary of each school's present and past SOL pass rates, area(s) of warning, overview of the reconstitution efforts, the department's recommendations, and projected follow-up.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the recommendations and ratings of Conditionally Accredited for the three schools.

**Impact on Resources:**

The Office of School Improvement will be required to use the academic review budget to fund auditors assigned to schools that are not PASS schools.

**Timetable for Further Review/Action:**

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Danville City		Name of School: Westwood Middle School	
Title I: N	School Improvement Status: N/A		Grades: 6-8
Subjects Warned in 2006: Mathematics		Subjects Warned in 2007: Mathematics	
Subjects Warned in 2008: Mathematics			
Overview of 2008-2009 Request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	71.89	67.63	69.08
Mathematics Performance	42.86	45.77	60.33
Science Performance	74.6	75.42	89.63
Writing Performance		84.03	76.69
History Performance		65.65	73.28

**Recommendations**

The department recommends the following for each school requesting a rating of Conditionally Accredited:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.
4. The division and school will submit the required data profile as specified by the department at least quarterly.
5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).

Specific recommendations for each school are as follows: Division staff, VDOE contractor, and school staff must meet monthly to discuss the progress in the school's implementation of the school improvement plan and the alignment of state and LEA resources.

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Portsmouth City		Name of School: Brighton Elementary	
Title I: Yes	School Improvement Status: Year 1 – School choice		Grades: K-6
Subjects Warned in 2006: Mathematics, History, Science		Subjects Warned in 2007: Mathematics, Science	Subjects Warned in 2008: English
Overview of 2008-2009 Request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	70.1	72.28	69.34
Mathematics Performance	63.76	60.76	68.62
Science Performance	68.26	69.54	71.98
Writing Performance		82.19	62.5
History Performance		74.56	78.73

**Recommendations**

The department recommends the following for each school requesting a rating of Conditionally Accredited:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.
4. The division and school will submit the required data profile as specified by the department at least quarterly.
5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).

Specific recommendations for each school are as follows: Division staff, PASS coach, and school staff must meet monthly to discuss the progress in the school's implementation of the school improvement plan and the alignment of state and LEA resources.

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Roanoke City		Name of School: Ruffner Middle School	
Title I: N	School Improvement Status: N/A		Grades: 6-8
Subjects Warned in 2006: Mathematics		Subjects Warned in 2007: Mathematics	
Subjects Warned in 2008: Mathematics			
Overview of 2008-2009 Request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	70.47	68.85	77.67
Mathematics Performance	51.21	50.84	59.2
Science Performance	81.14	77.74	86.2
Writing Performance	No available AYP Data – SOA only	70.07	74.26
History Performance	No available AYP Data – SOA only	64.57	85.16

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: Division staff, OSI staff, PASS coach, and school staff must meet monthly to discuss the progress in the school's implementation of the school improvement plan and the alignment of state and LEA resources.</p>



## **Summary of Data from Closeout Meeting for Divisions with Schools Conditionally Accredited**

On June 20, 2008, a closeout meeting was held in Roanoke for Virginia divisions that participated in the Virginia WebEx District Improvement Initiative and that have schools that were conditionally accredited. This closeout meeting completed a series of technical assistance sessions that were held during this past year.

### **Background**

During this past year, the Appalachia Regional Comprehensive Center (ARCC) at Edvantia delivered research-based technical assistance to the Virginia Department of Education's (VDOE) Office of School Improvement via the Virginia WebEx District Improvement Initiative (Virginia WebEx work). In early September 2007, staff from the VDOE approached the director of the Center on Innovation and Improvement (CII) about using the *Handbook on Restructuring and Substantial School Improvement*, a resource CII developed. VDOE staff were extremely interested in utilizing the research-based indicators from the handbook to improve the effectiveness of LEAs working with schools designated as conditionally accredited.

Following a series of conference calls, staff from VDOE, ARCC, CII, and the Virginia Foundation for Educational Leadership (VFEL) met in late September 2007 to develop a plan to carry out this work. The outcome of the planning meeting was the Virginia WebEx work and its primary objective was to help VDOE increase its capacity to build and sustain a system of statewide support for low-performing school divisions and schools. Specifically, Virginia wanted technical assistance that would help it (1) assist divisions to assess and strengthen their support for school improvement; and (2) assist divisions to develop and monitor school-level plans for improvement, especially in schools under restructuring or in need of substantial improvement.

The Virginia WebEx work's signature design included seven WebEx sessions for 20 Virginia division teams. The 20 division teams were divided into four groups for a total of 28 WebEx sessions. Each WebEx division team was staffed by three to five members who participated in the program. To kick off this collaborative effort, ARCC, CII, VDOE, and VFEL held a training in November 2007 for the eight Virginia Distinguished Educators (DEs) who were tasked with leading the WebEx sessions. Content of the sessions was based on the research-based CII handbook. The introductory meeting with the 20 participating Virginia division teams was held in December 2007; there, the division teams learned that they were expected to participate in the WebEx sessions between January 2008 and June 2008. WebEx participants also learned that the Virginia DEs (or WebEx faculty) would focus on three to four research-based indicators per session. Between WebEx sessions, division teams were required to use the Web-based District Support for School Improvement tool to assess their current level of functioning

relative to the indicators and to develop a detailed plan for improvement. If the division team found indicators that were in need of improvement, the team developed an objective with tasks, responsibilities, timelines, and measures of success. As the division team completed the tasks, progress was entered into the system through a monitoring component. The seven WebEx sessions focused on the following content:

- School improvement (two sessions dedicated to this topic)
- Allocation of resources and staff
- Division/school relationship
- Division impact on school improvement planning
- Division influence on instructional improvement
- School-level improvement processes

### **Closeout Meeting Data**

Approximately 74 attendees participated in the closeout meeting held in Roanoke. Participants included staff from VDOE, VFEL, ARCC, and CII; Virginia division team members; WebEx faculty; and Partnership for Achieving Successful Schools (PASS) coaches and/or auditors. Of the 74 attendees, approximately 88% (65) were division team members, WebEx faculty, and PASS coaches and/or auditors. The purpose of this meeting was for participating divisions to share information about the technical assistance they were involved in this year as part of their intervention to support conditionally accredited schools.

During the closeout meeting, three different types of data were collected: (1) meeting participants completed a comprehensive ARCC survey; (2) division teams completed a brief CII feedback form; and (3) divisions teams shared information they had prepared regarding the successes of the Virginia WebEx initiative, barriers that had been overcome during the past 6 months, and unanswered questions they might still have. A summary of findings from those three data sources follows.

### **Findings**

This section of the report presents findings by data type: survey, feedback form, and shared information.

#### **ARCC Virginia WebEx Initiative Survey**

At the June 20 meeting, WebEx Program participants were asked to complete an evaluation form. The purpose of this survey was to gather participants' assessments of the content of the WebEx sessions, WebEx processes, and the value of each session to their divisions. The evaluation form included 38 forced-choice items and 5 open-ended items.

The survey was completed by 58 participants; 77% of respondents were members of division teams, 11% were PASS coaches and/or auditors, 9% were WebEx faculty, and 4% indicated other. A summary of their responses follows.

The first section included 18 forced-choice items, which asked participants to rate their satisfaction with the content of the WebEx sessions using a scale of *to a great extent* (4) to *not at all* (1). Most participants were moderately to greatly satisfied with the content of the WebEx sessions. Two thirds (66%) of participants rated the session objectives as clearly identified to a great extent. More than 70% of participants indicated that the WebEx materials were authoritative (71%) and based on best practices (72%) to a great extent. See Table 1 for more information.

**Table 1. Participant Ratings of WebEx Session Content**

Item	To a great extent	To a moderate extent	To some extent	Not at all
To what extent were the WebEx sessions' objectives clearly identified?	66%	33%	2%	0%
To what extent were the WebEx sessions' objectives accomplished?	39%	51%	11%	0%
To what extent were the WebEx sessions appropriately organized?	48%	36%	16%	0%
To what extent was the amount of information provided adequate?	38%	38%	24%	0%
To what extent was the information provided of high quality?	48%	31%	21%	0%
To what extent was the information provided relevant?	53%	35%	12%	0%
To what extent was the information provided useful?	43%	38%	17%	2%
To what extent were the WebEx materials authoritative (i.e., strong research base)?	71%	21%	9%	0%
To what extent were the WebEx materials based on best practices?	72%	25%	4%	0%
To what extent did the WebEx sessions provide participants with opportunities to practice new skills?	23%	39%	33%	5%
To what extent did the WebEx sessions include time for participant reflection?	41%	35%	21%	3%
To what extent did the WebEx sessions provide you with <b>resources for information</b> that you can access for future use?	43%	35%	22%	0%
To what extent did the WebEx sessions increase your <b>knowledge</b> relative to the topics presented?	33%	36%	26%	5%
To what extent has the <b>knowledge</b> you gained from the WebEx sessions been incorporated into your work?	40%	33%	26%	0%
To what extent did the series of WebEx sessions assist your division to support school improvement?	26%	47%	25%	2%
To what extent did your division benefit from networking with other divisions?	37%	39%	19%	5%
To what extent did the homework assignments assist your division to support school improvement?	30%	33%	33%	4%
To what extent did reporting out during the WebEx sessions increase your knowledge?	26%	33%	30%	11%

The second section included 12 forced-choice items about WebEx processes and asked participants to rate their agreement using a scale of *strongly agree* (4) to *strongly disagree* (1). At least 80% of participants agreed or strongly agreed with five of the eight items regarding WebEx processes. More than 90% of participants agreed or strongly agreed that the WebEx faculty was knowledgeable about the subject matter (98%), their division team worked collaboratively to complete homework assignments (96%), and that division team members clearly communicated with one another to complete those assignments (94%). Only two of the items had disagreement ratings of 25% or higher. Participants disagreed that the WebEx presentation style was appropriate (25%), and 30% of participants felt the homework assignments were not useful. See Table 2 for more information.

**Table 2. Participant Ratings of WebEx Processes**

Item	Strongly agree	Agree	Disagree	Strongly disagree
The WebEx faculty was knowledgeable about the subject matter.	54%	44%	2%	0%
The WebEx faculty encouraged questions and participation.	65%	25%	4%	7%
The WebEx faculty related session material to real-life situations.	40%	49%	11%	0%
The WebEx faculty provided adequate support and feedback.	40%	42%	16%	2%
The presentation style of the WebEx sessions was appropriate.	23%	52%	25%	0%
The pace of the WebEx sessions was appropriate.	26%	60%	11%	4%
The length of the WebEx sessions was adequate.	31%	48%	14%	7%
The homework assignments between sessions were useful.	21%	49%	30%	0%
The time to complete homework assignments was sufficient.	29%	55%	16%	0%
Our division team worked collaboratively to complete the homework assignments.	50%	46%	2%	2%
Our division team members clearly communicated with one another to complete the homework assignments.	55%	39%	4%	2%
The Web-based system to plan, implement, and monitor strategies was helpful.	38%	52%	11%	0%

The second section also included two open-ended items about WebEx processes. The first open-ended item was preceded by a qualifying question that asked participants to indicate whether the Web-based tool supported their ongoing improvement efforts. If participants indicated yes, they were asked to provide an example. If participants indicated no, they were asked to provide suggestions for ways the program could have been structured to link Web-based tool activities and district improvement efforts.

Ninety-three percent (93%) of participants indicated the Web-based tool did support their ongoing improvement efforts; 42 participants provided examples. The majority of respondents

indicated the Web-based tool helped them to structure or focus their improvement plans. One respondent stated, “The WebEx supported our district’s ongoing improvement efforts by allowing us to map out strategies, make assignments, and establish timelines in a project management format.” Several respondents said the tool validated what their division was already doing. Others indicated it established a means of communication within and across divisions so that school improvement efforts could be shared.

Of the 7% who indicated the Web-based tool did not support their ongoing improvement efforts, only one suggestion was offered. One respondent simply stated, “Examples of what works.”

The second item asked participants how their division teams had evolved since the first WebEx session in January 2008; 45 participants provided comments. Almost half of the respondents said their division teams had increased collaboration. One respondent said, “We have become more cohesive and open. We had evolved into a collaborative team that reviews the data and works to implement and monitor strategic plans.” Several of the participants said their division teams had a better focus on areas of needed improvement. Participants also indicated that increased communication among team members and division personnel had evolved since the beginning WebEx session. A few participants said their teams had evolved but did not indicate how, and two respondents indicated the team had not evolved.

The third section of the survey included seven forced-choice items and two open-ended items about the specific WebEx sessions. The first seven questions asked participants to rate each session on its helpfulness to their division using a scale of *very helpful* (4) to *not at all helpful* (1). At least 70% of participants found all of the sessions to be helpful or very helpful. See Table 3 for more information.

**Table 3. Participant Ratings of WebEx Sessions**

Session	Very helpful	Helpful	Somewhat helpful	Not at all helpful
WebEx 1: Division Support for School Improvement, Part 1	35%	42%	20%	4%
WebEx 2: Division Support for School Improvement, Part 2	42%	44%	13%	2%
WebEx 3: Division Allocation of Resources and Staff	35%	47%	13%	6%
WebEx 4: Division-School Relationship	51%	29%	16%	4%
WebEx 5: Division Direction in School Improvement Planning	47%	42%	9%	2%
WebEx 6: Division Direction in Instruction Improvement	44%	31%	24%	2%
WebEx7: School-Level Improvement Processes	31%	40%	25%	4%

Participants were then asked to select the two sessions that were most helpful and to indicate why. Participants indicated WebEx Session 5: Division Direction in School

Improvement Planning was the most helpful and the reason most often reported was the focus on “quick wins.” Participants also felt WebEx Session 4: Division-School Relationship was helpful to ensure that divisions have participation at all levels, and WebEx Session 3: Division Allocation of Resources and Staff was helpful in reinforcing where the divisions were in their plans and providing resources that could be used to help them move forward.

Participants were also asked to select the one topic discussed during the WebEx sessions for which they still need additional information. The topic mentioned most often by participants was Resource Reallocation. Respondents also indicated they needed more information about Staff Incentives, Quality Staff, Quick Wins, and Progress Monitoring. Instead of selecting one specific topic, several participants indicated they needed more information about WebEx Session 7: School-Level Improvement Processes.

Section four of the survey asked participants to provide comments about the most and least helpful aspects, one thing they still need information about, and suggestions for the overall WebEx program. When asked to indicate the most helpful aspect, 43 individuals responded, and the majority of them found the networking across divisions to be the most helpful aspect of the program. Other helpful aspects included collaboration among teams and research-based resources.

Participants were asked to indicate the one least helpful aspect of the WebEx program; 36 participants responded to this item. Although no one clear hindrance to the program emerged, several of the comments focused on time. Participants felt the program should begin sooner in the year or possibly during the summer months. They also felt there was too much downtime during the sessions, and some sessions did not begin on time or extended longer than scheduled. Participants also saw the need for differentiated content. One respondent said, “It did not differentiate upon the current needs of each division.” Still other participants found the lack of face-to-face interaction difficult. “The WebEx sometimes left you disconnected due to the inability to see and respond to other participants,” indicated one respondent.

Other least helpful aspects mentioned by participants included too much talking on the part of some groups, homework assignments, technical difficulties, and the format of the WebEx sessions. Four participants indicated that the entire WebEx program was beneficial, and they found all aspects helpful.

Next, participants were asked if there was any information they still needed about the overall WebEx program, and 22 individuals responded to this item. Comments were varied and are listed below.

- How to move division away from “how we’ve always done it,” to effective quick change. It’s too easy for division to revert to its old practices.
- Mechanics of connections between central and school level.

- Next steps.
- Always need to learn more about school improvement and what works.
- Getting the best teachers on the bus.
- Systems for cataloging and sharing best practices across the district.
- Research based strategies for instruction.
- Increasing parental involvement in high poverty rural school.
- Interventions that are most successful.
- Incentives for hard to staff school personnel.
- Additional strategies to get us over the hump!
- Disconnect in curriculum between middle school math and elementary math.
- Data interpretation.
- Collection of evidence when doing walkthroughs and a system to have real time data and feedback.
- How to determine effectiveness of individual intervention when interventions are layered.
- Monitoring.
- Working with leadership; helping principals understand their role in monitoring and uniting staff.
- Finding and retaining teachers.
- I believe expanded version of all topics could be helpful. The “Division Direction of Improvement Planning” needs constant emphasis and support from VDOE.
- Fidelity.
- Did we lose sight of the conditional school during this year’s process? Do we need to focus in on one or two aspects rather than six?
- Review.

Lastly, participants were asked if they had any suggestions about the overall WebEx program, and 37 participants offered suggestions. The majority of the comments related to collaboration among divisions. Several of the respondents felt there should be more time to share ideas and successes across divisions. One participant said, “Increase the amount of time for district to district conversations. Decrease the amount of time for faculty/VDOE discussion.” Other respondents suggested adding two to three face-to-face meetings throughout the year.

Other suggestions offered by participants included differentiating content based on division need, starting the program earlier in the year, creating online discussion boards, making it mandatory for principals and supervisors to participate, and offering more direct instructions for the process.

## CII Feedback Form

WebEx initiative participants were asked to provide feedback to five open-ended items regarding the design and use of the online tool, looking ahead to an online tool for schools, and supporting effective school use of the tool. Participants completed one form per table. Nine completed forms were collected and used in this analysis.

**Design and use of the online tool.** The first question asked participants to describe any strengths of the online tool. Nine groups provided comments. Several of the groups indicated that the organization or structure of the online tool was a strength. One group said, “The structure of the tool enabled us to first determine the desired state of performance, self-assess where we are (environmental scan), and then develop strategies with accountability that move us from our current state to our desired state.” A few of the groups mentioned the clear and concise objectives. One group saw the opportunity to network with other districts about issues and concerns as a strength. Another group noted the ability to participate as a division, and see and hear the information at the same time. Other strengths mentioned were high-quality resources, the ability to print as you go, the ease to access and navigate, and the alignment with corrective action plans.

The next question asked participants to describe any weaknesses of the online tool. Nine groups responded. Several of the groups indicated weaknesses regarding technical aspects of the tool, such as the need for more flexibility in adding team member names, inability to print all information on a screen and cut and paste, system connection issues, and the difficulty of saving information. Other groups felt the format of the online tool needed improvements. One group said, “Initially, navigating through the tool was often frustrating—especially the need to work three different screens to complete the work for each indicator.” Other weaknesses cited were the inability to see all indicators at the beginning, the need for an in-depth definition of the indicator, confusion between required indicators and the full list, insufficient time, lack of professional development on how to use the system, and the objectives being numbered differently from the CII objectives.

Participants were then asked to provide suggested improvements for the design or use of the online tool. Nine groups provided suggestions. Several of the groups mentioned the need for a manual or help menu and acknowledged that the forthcoming manual would be very helpful. A few groups suggested an overview of the program. One group said, “We did not understand the big picture and often found that we had to provide data after we began to complete the form. We had to stop, regroup, then continue—so it took more time than it should have.” Two groups had comments regarding the coaching comments. One group felt that this feature would address many concerns, and the other group was interested in knowing who would enter those comments. Groups offered the following additional suggestions: include only a set number of objectives, develop a “save” button for all tasks, incorporate more videos, improve the print function, and use less lecture and more interaction.

**Looking ahead to an online tool for schools.** Participants were given the opportunity to look at version 1.0 of the online tool for schools and then share their reactions. Seven of the groups provided comments. Five of the groups provided positive comments and felt the tool would be useful with schools. One of those groups said, “The online tool for schools was user-friendly. The organization of the site allows users to quickly select items of their choice.” The other groups felt that the online tool still needed more explanation of the process and also needed to be more interactive for users.

**Supporting effective school use of the tool.** Last, participants were asked what supports still were needed to help their schools make effective use of the tool and the school improvement process it’s designed to encourage. All of the groups provided comments. Several of the groups indicated additional training and information about the program. Two groups mentioned time for implementation, and two groups indicated more communication would be beneficial. One group provided an idea, “A link to provide for interactive dialogue (e.g., opportunity to e-mail a specific individual to gain further insight in implementation challenges that those individuals already conquered).” One group felt inclusion of principals would be helpful, and another group said it should be mandatory for division teams to report out to the board.

### **3-2-1 Activity for Information Sharing**

In preparation for the closeout meeting, division teams were asked to complete a task (a 3-2-1 Activity) and to share the resulting data during the June 20 meeting. Teams were asked to list three successes their division had accomplished this school year, two barriers their division had overcome, and one thing they had learned during a WebEx session that was especially helpful to them. Division teams were also asked to indicate a question that was still unanswered.

Common successes were found across many of the divisions. Each of the successes listed below was mentioned by at least two school divisions (i.e., the division had accomplished this during the past school year).

- Reading and literacy programs were strengthened.
- Professional development schedules were changed and content was refocused and targeted.
- Increases in student achievement were noted.
- A smooth transition of leadership
- A focus on working with teachers to use data
- Strengthened and improved school assessments
- Pacing guides were strengthened.
- The provision of a better climate for staff and students was emphasized.
- A focus on early, intensive remediation
- Increased collaboration
- Most participants were enthusiastic and participated wholeheartedly.

However, the most common successes experienced across divisions were found in their focus on delivering a consistent message and their focus on developing a shared understanding, which most divisions felt led to an increase in purposeful collaboration.

In addition to sharing the three successes, divisions were also asked to indicate two barriers their division had overcome this past school year. Several common barriers could be found across divisions. Some divisions felt they had overcome the following barriers:

- Middle school math scores
- Providing planning time for teachers, particularly elementary school teachers
- The inability to have frank and honest discussions about student achievement
- Teaching teachers to use data
- The lack of experienced teachers and principals due to turnover issues
- Lack of collaboration among staff and central office support personnel
- Issues of fidelity to implementation
- Low expectations from teachers and local school boards
- Having so many new teachers and new staff in leadership positions
- Reallocation of resources in the middle of the year

Participating divisions were also asked to indicate one thing they had learned during the WebEx sessions that had been especially helpful to them. Again, responses varied, but new knowledge gained across divisions also revealed some commonalities. Some divisions felt that they had learned about the following:

- Importance of early, intensive intervention
- Need for purposeful dialogue
- Need for an emphasis on fidelity of implementation
- Different variety of assessments of progress monitoring tools available for their use
- Crucial need for networking and collaboration with colleagues
- Improvement process
- Quick Win method
- All seem to be in the same boat and we can learn a lot from each other

As with the delivery of any initiative, questions almost always remain. When asked to indicate what question they still have unanswered, the following questions or statements of need were listed:

- What will the data show?
- What outstanding commitment to the DOE do we still have and what is their commitment to us?

- What additional resources are available to do the work we need to do?
- How do we go about developing and implementing effective incentives?
- I still have concerns over math scores and the disconnect between elementary and middle school math curriculums.
- What other funding options are available to recruit and retain highly qualified teachers, particularly in math and for middle school?
- I still need more Quick Wins.
- How do we get high poverty parents interested in their child's education?
- I need information on the Clinical Faculty model.
- What are effective strategies that have been proven successful for maintaining fidelity that can be coupled with strategies implemented during 2007-08?

### **Overall Summary**

A review of the three data sources collected at the June 20 closeout meeting provides a snapshot of how Virginia WebEx participants perceive this work. For the most part, respondents appear satisfied with the content and reported that the materials appear to be authoritative and based on best practices. Respondents also appear satisfied with WebEx processes, but express some concern about the format of the presentation style and the homework assignments. Respondents also seem to have found value in the sessions provided. The Web tool appeared to be well received, and respondents indicated that the tool has helped them focus or structure their improvement plans. Respondents appear to be concerned about some technical aspects of the tool and advise that additional training on the tool would be helpful. Overall, the WebEx work appears to be well received by the division teams, and respondents appear open to the next phase of this work. The networking and collaboration aspects of this work appear to be very well received, and respondents indicate this aspect of the work is especially helpful. Two concerns emerge across the feedback: respondents hope that the work could begin earlier in the school year than it did this past year and indicate they need more information on resource reallocation. Many respondents also appear to believe that this initiative has already impacted or will impact student achievement.

## Board of Education Agenda Item

Item: D.

Date: September 25, 2008

**Topic:** First Review of Requests for Continuation of the Rating of Conditionally Accredited from Eight School Divisions

**Presenter:** Dr. Kathleen M. Smith, Director, Office of School Improvement, Division of Student Assessment and School Improvement

**Telephone Number:** (804) 225-2865      **E-Mail Address:** Kathleen.Smith@doe.virginia.gov

### Origin:

Topic presented for information only (no board action required)

Board review required by  
 State or federal law or regulation  
 Board of Education regulation  
 Other: \_\_\_\_\_

Action requested at this meeting     Action requested at future meeting:

### Previous Review/Action:

No previous board review/action

Previous review/action  
date September 26, 2007  
action Board accepted for first review a request for a continued rating of Conditionally Accredited

### Background Information:

8 VAC 20-131-300.C states that a school shall be rated Accreditation Denied based on its academic performance during academic years ending in 2006 and beyond, if it fails to meet the requirements to be rated Fully Accredited, for the preceding three consecutive years or for three consecutive years anytime thereafter.

As outlined in 8 VAC 20-131-315, as an alternative to the memorandum of understanding required for schools rated Accreditation Denied, a local school board may choose to reconstitute the school and apply to the Board of Education for a rating of Conditionally Accredited. The application shall outline specific responses that address all areas of deficiency that resulted in the Accreditation Denied status.

As defined by the Standards of Accreditation, "reconstitution" means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied. Actions may include, but not be limited to, restructuring a school's governance, instructional program, staff or student population.

## Summary of Major Elements

Last year, thirty schools were granted an accreditation rating of Conditionally Accredited. As indicated by preliminary data, twenty of those schools will be Fully Accredited. Nine schools from eight divisions are requesting a continued rating of Conditionally Accredited for the second consecutive year. Ellen W. Chambliss Elementary in Sussex County Public Schools is seeking a conditional rating for the third year. These ten schools are indicated below:

<b>Division</b>	<b>School Name</b>	<b>Subjects Warned in 2005</b>	<b>Subjects Warned in 2006</b>	<b>Subjects Warned in 2007</b>	<b>Preliminary Data Indicates Subjects Warned in 2008</b>
Caroline County	Caroline Middle School	English, History	Mathematics, History	Mathematics, History	Mathematics
Hampton City	Hampton Harbour Academy	English, Mathematics, History, Science	Mathematics	Alternative Accreditation Plan	Alternative Accreditation Plan
Henrico County	New Bridge	English	English, Mathematics	Alternative Plan	Alternative Plan
Norfolk City	Lake Taylor Middle School	English	Mathematics	Mathematics	Mathematics
Portsmouth City	Cradock Middle	English, Mathematics, Science	English, Mathematics, History, Science	English, Mathematics, Science	Mathematics
Richmond City	Chandler Middle School	English	English, Mathematics, History	English, Mathematics, History	English, Mathematics
Richmond City	Thomas C. Boushall Middle School	English	English, Mathematics, History	English, Mathematics, History	English, Mathematics, History, Science
Roanoke City	Lucy Addison Middle School	English	Mathematics	Mathematics, History	History
Sussex County	Sussex Central Middle School	English, Mathematics, Science	English, Mathematics	Mathematics	Mathematics
Sussex County	Ellen W. Chambliss Elementary	English, Mathematics, Science	English, Mathematics, Science	English	English

The chart below summarizes the primary and the additional justifications provided in September 2007 by each of the eight school divisions for reconstitution efforts in the ten schools. New Bridge Elementary School, an alternative education school in Henrico County Public Schools, will change grade configuration this school year. New Bridge Elementary will serve grades six through eight in 2008-2009, and the alternative accreditation plan will reflect this change next year.

<b>School Division</b>	<b>School Name</b>	<b>Governance</b>	<b>Staff</b>	<b>Student Population</b>	<b>Instructional Program</b>
Caroline County	Caroline Middle	Primary	Additional		
Hampton City	Hampton Harbour Academy	Primary			Continued alternative accreditation plan
Henrico County	New Bridge School	Primary	Additional	Additional (Changed grade configuration this school year)	Continued alternative accreditation plan
Norfolk City	Lake Taylor Middle	Additional	Primary		
Portsmouth City	Cradock Middle	Primary	Additional		
Richmond City	Chandler Middle	Primary	Additional		
Richmond City	Thomas C. Boushall Middle	Primary	Additional		
Roanoke City	Lucy Addison Middle	Primary	Additional		
Sussex County	Sussex Central Middle		Primary		Additional
Sussex County	Ellen W. Chambliss Elementary			Primary	

New Bridge School in Henrico County changed grade configuration this year. This alternative school will now serve grades 6-8 and not grades 3-8.

All of these schools have been implementing alternative governance through an oversight or shared governance committee. The purpose of the oversight or shared governance committee is to:

1. Serve as a formal mechanism to guide instructional decisions based on data including, but not limited to, formative assessment data, classroom observations, and review of lesson plans.
2. Monitor and adjust the school's improvement plan frequently.
3. Provide outside expertise and knowledge in the content area of writing and/or in research-based instructional practices that foster improved student achievement.
4. Align district resources with the needs of the school, including additional help and support from the central office.
5. Share the governance in the instructional area(s) of writing through a formal decision-making process. In these committees, the principal is not the sole instructional decision-maker.

Attachment A provides a summary of each school’s present and past SOL pass rates, area(s) of warning, overview of the reconstitution efforts, the department’s recommendations, and projected follow-up.

Four schools requesting a rating of Conditionally Accredited are warned only in mathematics. One of the schools is warned in three or more areas. Two of these schools are alternative schools with an approved alternative accreditation plan from the Board of Education.

<b>Description of Warning</b>	<b>Number of Schools 2008 – 2009</b>
Warned in only mathematics	4
Warned in only English	1
Warned in only history	1
Warned in English and mathematics	2
Warned in one subject	6
Warned in two subjects	1
Warned in three or more subjects	1
Alternative schools	2

Six of the schools are middle schools with a sixth- or seventh-grade and continue to be warned in mathematics. Pass rates on preliminary data from the Adequate Yearly Progress (AYP) report card have demonstrated improvement in grades six and/or seven as indicated below (data from New Bridge and Hampton Harbour are not included as in some cases the number of students is less than ten):

<b>School Division</b>	<b>School Name</b>	<b>Change in Percent Passing Mathematics in 2007 from 2006</b>		<b>Change in Percent Passing Mathematics in 2008 from 2007</b>	
		<b>6<sup>th</sup> Grade</b>	<b>7<sup>th</sup> Grade</b>	<b>6<sup>th</sup> Grade</b>	<b>7<sup>th</sup> Grade</b>
Caroline County	Caroline Middle	13	-22	8	14
Norfolk City	Lake Taylor Middle	8	13	11	16
Portsmouth City	Cradock Middle	No 6 <sup>th</sup> grade	12	No 6 <sup>h</sup> grade	16
Richmond City	Chandler Middle	17	16	16	9
Richmond City	Thomas C. Boushall Middle	-11	19	11	-2
Sussex County	Sussex Central Middle	13	31	19	-6

Schools that were granted a rating of conditional accreditation and warned in mathematics in 2007-2008 were required to administer the Algebra Readiness Diagnostic Test (ARDT) to all sixth and seventh grade students throughout the year. The ARDT tracks the number of students who are on grade level. Pre- and post-tests for the schools requesting a second conditional rating warned in mathematics for the second year are as follows (data from New Bridge and Hampton Harbour are not included as in some cases the number of students is less than ten):

### Sixth grade

<b>Division Name</b>	<b>School Name</b>	<b>Number of Students Pre-tested on ARDT</b>	<b>Number/Percent of students pre-tested not on grade level 2007-2008</b>	<b>Number of Students post-tested on ARDT</b>	<b>Number/Percent of students not on grade level post-test 2007-2008</b>
Caroline County	Caroline Middle	247	208/84.2%	277	159/57.4%
Norfolk City	Lake Taylor Middle	245	207/84.4%	244	241/98.7%
Portsmouth City	Cradock Middle	No 6 <sup>th</sup> grade	No 6 <sup>th</sup> grade	No 6 <sup>th</sup> grade	No 6 <sup>th</sup> grade
Richmond City	Chandler Middle	75	43/57.3%	75	38/50.7%
Richmond City	Thomas C. Boushall Middle	85	58/68.2%	85	60/70.6%
Sussex County	Sussex Central Middle	84	74/88.1%	83	49/59%

### Seventh grade

<b>Division Name</b>	<b>School Name</b>	<b>Number of Students Pre-tested on ARDT</b>	<b>Number/Percent of students not on grade level pre-test 2007-2008</b>	<b>Number of Students Post-tested on ARDT</b>	<b>Number/Percent of students not on grade level post-test 2007-2008</b>
Caroline County	Caroline Middle	250	210/84%	164	123/75%
Norfolk City	Lake Taylor Middle	232	177/76.3%	246	179/72.8%
Portsmouth City	Cradock Middle	282	202/71.6%	109	75/68.8%
Richmond City	Chandler Middle	70	45/64.3%	72	46/63.9%
Richmond City	Thomas C. Boushall Middle	102	78/76.5%	103	73/70.9%
Sussex County	Sussex Central Middle	75	67/89.3%	74	50/67.6%

Schools granted a rating of conditional accreditation in 2007-2008 were also required to participate in technical assistance from the department. Through a partnership with the Appalachia Regional Comprehensive Center (ARCC), the Virginia Foundation of Educational Leadership (VFEL), the Center for Innovation and Improvement (CII) and the Virginia Department of Education, division staff were provided a series of technical assistance provided via WebEx. A copy of the evaluation for this project is included as Attachment B. The technical assistance provided division staff with information regarding the district-level indicators that support the rapid improvement of low-performing schools. These indicators are as follows:

1. Community. The district includes civic leaders, community organizations, and churches in the district and school improvement planning and maintains regular communication with them.
2. Achievement Targets. The district sets district, school, and student subgroup achievement targets.
3. Data System. The district ensures that key pieces of user-friendly data are available in a timely fashion at the district, schools and classroom levels.
4. Program Evaluation. The district examines existing school improvement strategies being implemented across the district and determines their value, expanding, modifying, and culling as evidence suggests.
5. Curriculum. The district provides a cohesive district curriculum guide aligned with state standards or otherwise places curricular expectation on the school.
6. Data Training. The district provides the technology, training, and support to facilitate the school's data management needs.
7. Staff Incentives. The district provides incentives for staff who work effectively in hard-to-staff and restructured schools
8. Resource Reallocation. The district regularly reallocates resources to support school, staff, and instructional improvement.
9. Quality Staff. The district recruits, trains, supports, and places personnel to competently address the problems of schools in need of improvement.
10. District Intervention. The district intervenes early when a school is not making adequate progress.
11. Progress Monitoring. The school reports and documents its progress monthly to the superintendent, and the superintendent reports the school's progress to the school board.
12. District Contact. The district designates a central office contact person for the school, and that person maintains close communication with the school and an interest in its progress.
13. District-School Communication. District and school decision makers meet at least twice a month to discuss the school's progress.
14. Professional Development. Professional development is built into the school schedule by the district, but the school is allowed discretion in selecting, training and consulting that fit the requirements of its improvement/restructuring plan and its evolving needs.
15. Programs and Practices. The improvement/restructuring plan includes research-based, field-proven programs, practices, and models.
16. Vision. The improvement/restructuring plan includes a clear vision of what the school will look like when restructured or substantially improved.
17. Quick Wins. The improvement/restructuring plan focuses on "quick wins," early successes in improvement.
18. School Teams. A team structure is officially incorporated into the school improvement plan and school governance policy.
19. Student Support. The district works with the school to provide early and intensive intervention for students not making progress.
20. Instruction and Performance. The school's Leadership Team regularly looks at school performance data and aggregated classroom observation data and uses that data to make decisions about school improvement and professional development needs.

It is imperative to emphasize not only the shared leadership between the central office and the school, but the importance of shared instructional leadership within the school. In the 2008-2009 school year, the partnership will continue to provide technical assistance with a concentration on continued division-level support and school-level support with a focus on shared instructional leadership. Division staff, principals,

school improvement teams, and lead teachers will receive research-based technical assistance throughout the school year prepared by the Center for Innovation and Improvement and delivered by VFEL faculty and VDOE staff on the following rapid improvement leadership indicators. Rapid improvement leaders:

1. Make an action plan so that everyone involved knows specifically what they need to do differently.
2. First concentrate on a very limited number of changes to achieve early, visible wins for the school.
3. Make changes that deviate from organization's norms and rules if necessary to gain visible wins.
4. Implement an action plan in which change is mandatory for all staff, not optional.
5. Replace or redeploy some staff as necessary based on careful examination of skills and readiness for change.
6. Quickly discard tactics that don't work and spend more resources and time on tactics that work.
7. Report progress but keep school's focus on high goals.
8. Motivate others inside and outside the school to contribute to success.
9. Use various tactics to help staff empathize with those they serve and be motivated for change.
10. Work hard to gain the support of trusted influencers among staff and community.
11. Silence critics with speedy success on "quick win" objectives.
12. Personally analyze data about the organization's performance to identify high-priority problems that can be fixed quickly.
13. Set up systems to measure and report interim results often.
14. Share results in open-air meetings to hold all staff accountable for results and to focus on solving problems.

Systems and processes are also necessary for improvement. For this reason, additional technical assistance will be provided by the Center for Innovation and Improvement and delivered by VFEL faculty and VDOE staff to focus on the following systems and processes:

1. Establishing a team structure with specific duties and time for instructional planning.
2. Focusing the principal's role on building leadership capacity, achieving learning goals, and improving instruction.
3. Aligning classroom observations with evaluation criteria and professional development.
4. Engaging teachers in aligning instruction with standards and benchmarks.
5. Engaging teachers in assessing and monitoring student mastery.
6. Engaging teachers in differentiating and aligning learning activities.
7. Assessing student learning frequently with standards-based assessments.
8. Expecting and monitoring sound instruction in a variety of modes.
9. Expecting and monitoring sound homework practices and communication with parents.
10. Expecting and monitoring sound classroom management.

The importance of data cannot be underscored for schools that are chronically underachieving. Using research-based indicators that lead to increased student achievement is imperative for improvement. The department has designed a quarterly reporting instrument that will help divisions and schools monitor critical indicators that are related not only to immediate increases in student achievement, but also to those indicators that are attributed to students not graduating on time.

## **Recommendations**

The following recommendations for each of the ten schools requesting a continued rating of Conditional Accreditation:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.
4. The division and school will submit the required data profile as specified by the department, at least quarterly.
5. The division will adhere to any additional recommendations indicated in the Conditional Request and Follow-up form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular monthly basis, reporting to the superintendent and Office of School Improvement). Specific recommendations for each school are as follows:

<b>Division</b>	<b>School Name</b>	<b>Recommendations</b>
Caroline County	Caroline Middle School	Since there is a new central office team, it is recommended that at least three division staff assigned to support the school participate in technical assistance regarding division-level support as well as school-level support. It is recommended that the same auditor from 2007-2008 be assigned to this school to provide for continuity in programming.
Hampton City	Hampton Harbour Academy	Student progress at this alternative school needs to be closely monitored. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to monitor individual student progress. Extra support needed to increase student achievement will be discussed at this meeting. The auditor will monitor the implementation of the the school improvement plan. It is recommended that a new auditor be assigned to this school.

<b>Division</b>	<b>School Name</b>	<b>Recommendations</b>
Henrico County	New Bridge School	Student progress at this alternative school needs to be closely monitored. The auditor will meet with a division-level representative and the principal, at least monthly. The purpose of this meeting is to monitor individual student progress. Extra assistance needed to support student achievement will be discussed at this meeting. The auditor will follow the implementation of the support throughout each month. It is recommended that a new auditor be assigned to this school.
Norfolk City Schools	Lake Taylor Middle School	It is recommended that the same auditor from 2007-2008 be assigned to this school to provide for continuity in programming.
Portsmouth City	Cradock Middle School	It is recommended that the same auditor from 2007-2008 be assigned to this school to provide for continuity in programming.
Richmond City	Chandler Middle School	Since this school is in Year 6 of school improvement, it is recommended that school improvement funds be used to employ a school improvement expert to assist the alternative governance team. In addition, the PASS assistance will be elevated from coach to auditor. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to align district and school resources as well as discuss the implementation of the school's improvement plan. It is recommended that a new auditor be assigned to this school.
Richmond City	Thomas C. Boushall Middle School	PASS assistance will be elevated from coach to auditor. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to align district and school resources as well as discuss the implementation of the school's improvement plan.
Roanoke City	Addison Middle School	The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to align district and school resources as well as discuss the implementation of the school's improvement plan.
Sussex County	Sussex Central Middle School	With a new principal this year, it is recommended that an alternative governance team be established to monitor the implementation of the school improvement plan. This team should meet monthly and include the auditor and any outside experts needed for improvement. It is recommended that a new auditor be assigned to this school.

Division	School Name	Recommendations
Sussex County	Ellen W. Chambliss Elementary School	It is recommended that an alternative governance team be established to monitor the implementation of the school improvement plan. This team should meet monthly and include the auditor and any outside experts needed for improvement. It is also recommended that the division explore the possibility of changing or making adjustments to the current basal series that align with the Standards of Learning. It is recommended that a new auditor be assigned to this school.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the recommendations and ratings of Conditionally Accredited for the ten schools.

**Impact on Resources:**

The Office of School Improvement will be required to use the academic review budget to fund auditors assigned to schools that are not PASS schools.

**Timetable for Further Review/Action:**

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Caroline County		Name of School: Caroline Middle School	
Title I: N	School Improvement Status:		Grades: 6-8
Subjects Warned in 2005: English, History	Subjects Warned in 2006: Mathematics, History	Subjects Warned in 2007: Mathematics, History	Subjects Warned in 2008: Mathematics
Overview of 2007-2008 Request	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. Staff changes were made this year and last year.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	70.47	68.85	77.67
Mathematics Performance	51.21	50.84	59.2
Science Performance	81.14	77.74	86.2
Writing Performance	No available AYP Data – SOA only	70.07	74.26
History Performance	No available AYP Data – SOA only	64.57	85.16

#### Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.
4. The division and school will submit the required data profile as specified by the department at least quarterly.
5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).

Specific recommendations for each school are as follows: Since there is a new central office team, it is recommended that at least three division staff assigned to support the school participate in technical assistance regarding division-level support as well as school-level support. It is recommended that the same auditor from 2007-2008 be assigned to this school to provide for continuity in programming.

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Hampton City		Name of School: Hampton Harbour Academy School	
Title I: Y	School Improvement Status: Year 3		Grades: 6-8
Subjects Warned in 2005: English, Mathematics, History, Science	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Alternative Accreditation Plan	Subjects Warned in 2008: Alternative Accreditation Plan
Overview of 2007- 2008 Request	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote with 70% needed for a quorum.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	42.47	55.56	44.64
Mathematics Performance	32	44.62	62.71
Science Performance	34.78	39.29	47.73
Writing Performance	No available AYP Data – SOA only	65.15	66.04
History Performance	No available AYP Data – SOA only		

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: Student progress at this alternative school needs to be closely monitored. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to monitor individual student progress. Extra support needed to increase student achievement will be discussed at this meeting. The auditor will monitor the implementation of the school improvement plan. It is recommended that a new auditor be assigned to this school.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Henrico County		Name of School: New Bridge School	
Title I: Yes	School Improvement Status: Year 2		Grades: 6-8
Subjects Warned in 2005: English	Subjects Warned in 2006: English, Mathematics	Subjects Warned in 2007: Alternative Accreditation Plan	Subjects Warned in 2008: Alternative Accreditation Plan
Overview of 2007-2008 Request	The committee plans to complete a comprehensive needs assessment. The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee will meet no less than twice per month. Decision-making is by consensus or majority vote. Progress reports will be submitted to the superintendent regularly. Specific outline of committee meetings provided.		
Additional 2008-2009 request	Changing Student Population		

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	41.13	42.05	40
Mathematics Performance	28.46	41.38	36.76
Science Performance	63.49	70.37	64.1
Writing Performance	No available AYP Data – SOA only	40.43	51.52
History Performance	No available AYP Data – SOA only	71.08	67.19

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: Student progress at this alternative school needs to be closely monitored. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to monitor individual student progress. Extra support needed to increase student achievement will be discussed at this meeting. The auditor will monitor the implementation of the school improvement plan. It is recommended that a new auditor be assigned to this school.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Norfolk City		Name of School: Lake Taylor Middle School	
Title I: N	School Improvement Status:		Grades: 6-8
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics	Subjects Warned in 2008: Mathematics
Overview of 2007-2008 Request	A new principal was hired with a strong background in mathematics and science and a new assistant principal was hired with a strong background in reading. The entire mathematics team has been staffed with highly qualified teachers. An oversight committee will be implemented, but the description of the committee is limited at this time to the committee make-up.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	66.48	70.52	67.83
Mathematics Performance	40.68	49.5	59.44
Science Performance	74.31	73.79	80.92
Writing Performance	No available AYP Data – SOA only	70.55	78.11
History Performance	No available AYP Data – SOA only	87.46	78.65

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: It is recommended that the same auditor from 2007-2008 be assigned to this school to provide for continuity in programming.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Portsmouth City		Name of School: Cradock Middle School	
Title I: N	School Improvement Status:		Grades: 6-8
Subjects Warned in 2005: English, Mathematics, Science	Subjects Warned in 2006: English, Mathematics, History, Science	Subjects Warned in 2007: English, Mathematics, Science	Subjects Warned in 2008: Mathematics
Overview of 2007-2008 Request	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote. A timeline was provided. Staff was replaced.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	52.28	60.4	68.85
Mathematics Performance	28.43	45.07	58.6
Science Performance	60	69.7	77.22
Writing Performance	No available AYP Data – SOA only	68.13	66.11
History Performance	No available AYP Data – SOA only	69.07	71.37

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: It is recommended that the same auditor from 2007-2008 be assigned to this school to provide for continuity in programming.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Richmond City		Name of School: Chandler Middle School	
Title I: Yes	School Improvement Status: Year 6		Grades: 6-8
Subjects Warned in 2005: English	Subjects Warned in 2006: English, Mathematics, History	Subjects Warned in 2007: English, Mathematics, History	Subjects Warned in 2008: English, Mathematics
Overview of 2007-2008 Request	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets bi-weekly. Decision-making is by consensus with majority vote. Administrative staff was replaced.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	54.65	64.74	60
Mathematics Performance	34.88	47.51	50.9
Science Performance	60.74	84.51	69.33
Writing Performance	No available AYP Data – SOA only	66.95	69.11
History Performance	No available AYP Data – SOA only	65.45	69.97

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: Since this school is in Year 6 of school improvement, it is recommended that school improvement funds be used to employ a school improvement expert to assist the alternative governance team. In addition, the PASS assistance will be elevated from coach to auditor. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to align district and school resources as well as discuss the implementation of the school's improvement plan. It is recommended that a new auditor be assigned to this school.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Richmond City		Name of School: Thomas C. Boushall Middle School	
Title I: Yes	School Improvement Status: Year 4		Grades: 6-8
Subjects Warned in 2005: English	Subjects Warned in 2006: English, Mathematics, History	Subjects Warned in 2007: English, Mathematics, History	Subjects Warned in 2008: English, Mathematics, History, Science
Overview of 2007-2008 Request	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets bi-weekly. Decision-making is by consensus with majority vote. The school has replaced staff.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	55.26	61.14	57.47
Mathematics Performance	46.5	47.07	47.96
Science Performance	69.61	74.13	64.78
Writing Performance	No available AYP Data – SOA only	62.35	59.86
History Performance	No available AYP Data – SOA only	45.29	58.43

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: PASS assistance will be elevated from coach to auditor. The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to align district and school resources as well as discuss the implementation of the school's improvement plan.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Roanoke City		Name of School: Addison Middle School	
Title I: Yes	School Improvement Status: Year 1		Grades: 6-8
Subjects Warned in 2005: English	Subjects Warned in 2006: Mathematics	Subjects Warned in 2007: Mathematics, History	Subjects Warned in 2008: History
Overview of 2007-2008 Request	The role of the committee is to monitor the school improvement plan, review data, and make adjustments as needed. The committee meets at least monthly. Decision-making is by consensus with majority vote.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	63.25	68.72	70.98
Mathematics Performance	48.13	61.2	71.27
Science Performance	73.91	82.39	84.21
Writing Performance	No available AYP Data – SOA only	64.1	70.47
History Performance	No available AYP Data – SOA only	57.44	67.73

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: The auditor will meet with a division-level representative and the principal at least monthly. The purpose of this meeting is to align district and school resources as well as discuss the implementation of the school's improvement plan.</p>

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Sussex County		Name of School: Ellen W. Chambliss Elementary School	
Title I: Yes	School Improvement Status: Not in School Improvement		Grades: K-3
Subjects Warned in 2005: English, Math, Science	Subjects Warned in 2006: English, Math, Science	Subjects Warned in 2007: English	Subjects Warned in 2008: English
Overview of 2007-2008 Request	This is the 2 <sup>nd</sup> request for a conditional rating. Pass rates at grade 3 have demonstrated improvement in mathematics and English.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	51.55	65.22	64.91
Mathematics Performance	38.65	89.13	81.36
Science Performance	50.98	86.36	72.88
History Performance	No available AYP Data – SOA only	91.11	84.21

#### Recommendations

The department recommends the following for each school requesting a rating of Conditionally Accredited:

1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.
2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.
3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.
4. The division and school will submit the required data profile as specified by the department at least quarterly.
5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).

Specific recommendations for each school are as follows: It is recommended that an alternative governance team be established to monitor the implementation of the school improvement plan. This team should meet monthly and include the auditor and any outside experts needed for improvement. It is also recommended that the division explore the possibility of changing or making adjustments to the current basal series that align with the Standards of Learning. It is recommended that a new auditor be assigned to this school.

Virginia Department of Education  
Division of Student Assessment and School Improvement

Name of Division: Sussex County		Name of School: Sussex Central Middle School	
Title I: N	School Improvement Status:		Grades: 6-8
Subjects Warned in 2005: English, Mathematics, Science	Subjects Warned in 2006: English, Mathematics	Subjects Warned in 2007: Mathematics	Subjects Warned in 2008: Mathematics
Overview of 2007-2008 Request	Principal was replaced two years ago (turnaround specialist). New assistant principal was hired last year. Assistant superintendent was assigned the responsibility to supervise the instructional program and monitor the school's instructional progress last year. Teachers were replaced with highly qualified teachers endorsed in the area of mathematics.		
Additional 2008-2009 request			

Adequate Yearly Progress (AYP) Pass Rates	2006	2007	2008 (Preliminary Rates)
English Performance	65.71	73.17	78.39
Mathematics Performance	35.06	54.95	63
Science Performance	67.96	68.85	89.25
Writing Performance	No available AYP Data – SOA only	77.12	80.41
History Performance	No available AYP Data – SOA only	80.65	87.1

Recommendations
<p>The department recommends the following for each school requesting a rating of Conditionally Accredited:</p> <ol style="list-style-type: none"> <li>1. The department will appoint an auditor through the academic review process or the PASS program to monitor the implementation of the school's reconstitution efforts monthly.</li> <li>2. LEA staff assigned to work with the school throughout the year will continue to attend technical assistance provided by the department regarding district support and the district framework needed to restructure and support low-performing schools. In addition, school staff, including the principal, will attend similar technical assistance regarding rapid improvement leadership indicators and systems and processes that support increased student achievement. This technical assistance will be provided by the Virginia Foundation of Educational Leadership, the Appalachian Regional Comprehensive Center, and the Center for Innovation and Improvement and will be monitored by a monthly online reporting system.</li> <li>3. If warned in mathematics in the middle school grades, the Algebra Readiness Diagnostic Test (ARDT) will be given to all sixth- and seventh-grade students throughout the year. The Office of School Improvement and the LEA representative will set a schedule for this testing based on recommendations from the department's middle school mathematics specialist.</li> <li>4. The division and school will submit the required data profile as specified by the department at least quarterly.</li> <li>5. The division will adhere to any additional recommendations indicated in the Conditional Request and Recommendations form or by the auditor throughout the year and will comply with any reporting requirements requested (submission of ARDT data on a regular basis, monthly reporting to the superintendent and Office of School Improvement).</li> </ol> <p>Specific recommendations for each school are as follows: With a new principal this year, it is recommended that an alternative governance team be established to monitor the implementation of the school improvement plan. This team should meet monthly and include the auditor and any outside experts needed for improvement. It is recommended that a new auditor be assigned to this school.</p>



## **Summary of Data from Closeout Meeting for Divisions with Schools Conditionally Accredited**

On June 20, 2008, a closeout meeting was held in Roanoke for Virginia divisions that participated in the Virginia WebEx District Improvement Initiative and that have schools that were conditionally accredited. This closeout meeting completed a series of technical assistance sessions that were held during this past year.

### **Background**

During this past year, the Appalachia Regional Comprehensive Center (ARCC) at Edvantia delivered research-based technical assistance to the Virginia Department of Education's (VDOE) Office of School Improvement via the Virginia WebEx District Improvement Initiative (Virginia WebEx work). In early September 2007, staff from the VDOE approached the director of the Center on Innovation and Improvement (CII) about using the *Handbook on Restructuring and Substantial School Improvement*, a resource CII developed. VDOE staff were extremely interested in utilizing the research-based indicators from the handbook to improve the effectiveness of LEAs working with schools designated as conditionally accredited.

Following a series of conference calls, staff from VDOE, ARCC, CII, and the Virginia Foundation for Educational Leadership (VFEL) met in late September 2007 to develop a plan to carry out this work. The outcome of the planning meeting was the Virginia WebEx work and its primary objective was to help VDOE increase its capacity to build and sustain a system of statewide support for low-performing school divisions and schools. Specifically, Virginia wanted technical assistance that would help it (1) assist divisions to assess and strengthen their support for school improvement; and (2) assist divisions to develop and monitor school-level plans for improvement, especially in schools under restructuring or in need of substantial improvement.

The Virginia WebEx work's signature design included seven WebEx sessions for 20 Virginia division teams. The 20 division teams were divided into four groups for a total of 28 WebEx sessions. Each WebEx division team was staffed by three to five members who participated in the program. To kick off this collaborative effort, ARCC, CII, VDOE, and VFEL held a training in November 2007 for the eight Virginia Distinguished Educators (DEs) who were tasked with leading the WebEx sessions. Content of the sessions was based on the research-based CII handbook. The introductory meeting with the 20 participating Virginia division teams was held in December 2007; there, the division teams learned that they were expected to participate in the WebEx sessions between January 2008 and June 2008. WebEx participants also learned that the Virginia DEs (or WebEx faculty) would focus on three to four research-based indicators per session. Between WebEx sessions, division teams were required to use the Web-based District Support for School Improvement tool to assess their current level of functioning

relative to the indicators and to develop a detailed plan for improvement. If the division team found indicators that were in need of improvement, the team developed an objective with tasks, responsibilities, timelines, and measures of success. As the division team completed the tasks, progress was entered into the system through a monitoring component. The seven WebEx sessions focused on the following content:

- School improvement (two sessions dedicated to this topic)
- Allocation of resources and staff
- Division/school relationship
- Division impact on school improvement planning
- Division influence on instructional improvement
- School-level improvement processes

### **Closeout Meeting Data**

Approximately 74 attendees participated in the closeout meeting held in Roanoke. Participants included staff from VDOE, VFEL, ARCC, and CII; Virginia division team members; WebEx faculty; and Partnership for Achieving Successful Schools (PASS) coaches and/or auditors. Of the 74 attendees, approximately 88% (65) were division team members, WebEx faculty, and PASS coaches and/or auditors. The purpose of this meeting was for participating divisions to share information about the technical assistance they were involved in this year as part of their intervention to support conditionally accredited schools.

During the closeout meeting, three different types of data were collected: (1) meeting participants completed a comprehensive ARCC survey; (2) division teams completed a brief CII feedback form; and (3) divisions teams shared information they had prepared regarding the successes of the Virginia WebEx initiative, barriers that had been overcome during the past 6 months, and unanswered questions they might still have. A summary of findings from those three data sources follows.

### **Findings**

This section of the report presents findings by data type: survey, feedback form, and shared information.

#### **ARCC Virginia WebEx Initiative Survey**

At the June 20 meeting, WebEx Program participants were asked to complete an evaluation form. The purpose of this survey was to gather participants' assessments of the content of the WebEx sessions, WebEx processes, and the value of each session to their divisions. The evaluation form included 38 forced-choice items and 5 open-ended items.

The survey was completed by 58 participants; 77% of respondents were members of division teams, 11% were PASS coaches and/or auditors, 9% were WebEx faculty, and 4% indicated other. A summary of their responses follows.

The first section included 18 forced-choice items, which asked participants to rate their satisfaction with the content of the WebEx sessions using a scale of *to a great extent* (4) to *not at all* (1). Most participants were moderately to greatly satisfied with the content of the WebEx sessions. Two thirds (66%) of participants rated the session objectives as clearly identified to a great extent. More than 70% of participants indicated that the WebEx materials were authoritative (71%) and based on best practices (72%) to a great extent. See Table 1 for more information.

**Table 1. Participant Ratings of WebEx Session Content**

Item	To a great extent	To a moderate extent	To some extent	Not at all
To what extent were the WebEx sessions' objectives clearly identified?	66%	33%	2%	0%
To what extent were the WebEx sessions' objectives accomplished?	39%	51%	11%	0%
To what extent were the WebEx sessions appropriately organized?	48%	36%	16%	0%
To what extent was the amount of information provided adequate?	38%	38%	24%	0%
To what extent was the information provided of high quality?	48%	31%	21%	0%
To what extent was the information provided relevant?	53%	35%	12%	0%
To what extent was the information provided useful?	43%	38%	17%	2%
To what extent were the WebEx materials authoritative (i.e., strong research base)?	71%	21%	9%	0%
To what extent were the WebEx materials based on best practices?	72%	25%	4%	0%
To what extent did the WebEx sessions provide participants with opportunities to practice new skills?	23%	39%	33%	5%
To what extent did the WebEx sessions include time for participant reflection?	41%	35%	21%	3%
To what extent did the WebEx sessions provide you with <b>resources for information</b> that you can access for future use?	43%	35%	22%	0%
To what extent did the WebEx sessions increase your <b>knowledge</b> relative to the topics presented?	33%	36%	26%	5%
To what extent has the <b>knowledge</b> you gained from the WebEx sessions been incorporated into your work?	40%	33%	26%	0%
To what extent did the series of WebEx sessions assist your division to support school improvement?	26%	47%	25%	2%
To what extent did your division benefit from networking with other divisions?	37%	39%	19%	5%
To what extent did the homework assignments assist your division to support school improvement?	30%	33%	33%	4%
To what extent did reporting out during the WebEx sessions increase your knowledge?	26%	33%	30%	11%

The second section included 12 forced-choice items about WebEx processes and asked participants to rate their agreement using a scale of *strongly agree* (4) to *strongly disagree* (1). At least 80% of participants agreed or strongly agreed with five of the eight items regarding WebEx processes. More than 90% of participants agreed or strongly agreed that the WebEx faculty was knowledgeable about the subject matter (98%), their division team worked collaboratively to complete homework assignments (96%), and that division team members clearly communicated with one another to complete those assignments (94%). Only two of the items had disagreement ratings of 25% or higher. Participants disagreed that the WebEx presentation style was appropriate (25%), and 30% of participants felt the homework assignments were not useful. See Table 2 for more information.

**Table 2. Participant Ratings of WebEx Processes**

Item	Strongly agree	Agree	Disagree	Strongly disagree
The WebEx faculty was knowledgeable about the subject matter.	54%	44%	2%	0%
The WebEx faculty encouraged questions and participation.	65%	25%	4%	7%
The WebEx faculty related session material to real-life situations.	40%	49%	11%	0%
The WebEx faculty provided adequate support and feedback.	40%	42%	16%	2%
The presentation style of the WebEx sessions was appropriate.	23%	52%	25%	0%
The pace of the WebEx sessions was appropriate.	26%	60%	11%	4%
The length of the WebEx sessions was adequate.	31%	48%	14%	7%
The homework assignments between sessions were useful.	21%	49%	30%	0%
The time to complete homework assignments was sufficient.	29%	55%	16%	0%
Our division team worked collaboratively to complete the homework assignments.	50%	46%	2%	2%
Our division team members clearly communicated with one another to complete the homework assignments.	55%	39%	4%	2%
The Web-based system to plan, implement, and monitor strategies was helpful.	38%	52%	11%	0%

The second section also included two open-ended items about WebEx processes. The first open-ended item was preceded by a qualifying question that asked participants to indicate whether the Web-based tool supported their ongoing improvement efforts. If participants indicated yes, they were asked to provide an example. If participants indicated no, they were asked to provide suggestions for ways the program could have been structured to link Web-based tool activities and district improvement efforts.

Ninety-three percent (93%) of participants indicated the Web-based tool did support their ongoing improvement efforts; 42 participants provided examples. The majority of respondents

indicated the Web-based tool helped them to structure or focus their improvement plans. One respondent stated, “The WebEx supported our district’s ongoing improvement efforts by allowing us to map out strategies, make assignments, and establish timelines in a project management format.” Several respondents said the tool validated what their division was already doing. Others indicated it established a means of communication within and across divisions so that school improvement efforts could be shared.

Of the 7% who indicated the Web-based tool did not support their ongoing improvement efforts, only one suggestion was offered. One respondent simply stated, “Examples of what works.”

The second item asked participants how their division teams had evolved since the first WebEx session in January 2008; 45 participants provided comments. Almost half of the respondents said their division teams had increased collaboration. One respondent said, “We have become more cohesive and open. We had evolved into a collaborative team that reviews the data and works to implement and monitor strategic plans.” Several of the participants said their division teams had a better focus on areas of needed improvement. Participants also indicated that increased communication among team members and division personnel had evolved since the beginning WebEx session. A few participants said their teams had evolved but did not indicate how, and two respondents indicated the team had not evolved.

The third section of the survey included seven forced-choice items and two open-ended items about the specific WebEx sessions. The first seven questions asked participants to rate each session on its helpfulness to their division using a scale of *very helpful* (4) to *not at all helpful* (1). At least 70% of participants found all of the sessions to be helpful or very helpful. See Table 3 for more information.

**Table 3. Participant Ratings of WebEx Sessions**

Session	Very helpful	Helpful	Somewhat helpful	Not at all helpful
WebEx 1: Division Support for School Improvement, Part 1	35%	42%	20%	4%
WebEx 2: Division Support for School Improvement, Part 2	42%	44%	13%	2%
WebEx 3: Division Allocation of Resources and Staff	35%	47%	13%	6%
WebEx 4: Division-School Relationship	51%	29%	16%	4%
WebEx 5: Division Direction in School Improvement Planning	47%	42%	9%	2%
WebEx 6: Division Direction in Instruction Improvement	44%	31%	24%	2%
WebEx7: School-Level Improvement Processes	31%	40%	25%	4%

Participants were then asked to select the two sessions that were most helpful and to indicate why. Participants indicated WebEx Session 5: Division Direction in School

Improvement Planning was the most helpful and the reason most often reported was the focus on “quick wins.” Participants also felt WebEx Session 4: Division-School Relationship was helpful to ensure that divisions have participation at all levels, and WebEx Session 3: Division Allocation of Resources and Staff was helpful in reinforcing where the divisions were in their plans and providing resources that could be used to help them move forward.

Participants were also asked to select the one topic discussed during the WebEx sessions for which they still need additional information. The topic mentioned most often by participants was Resource Reallocation. Respondents also indicated they needed more information about Staff Incentives, Quality Staff, Quick Wins, and Progress Monitoring. Instead of selecting one specific topic, several participants indicated they needed more information about WebEx Session 7: School-Level Improvement Processes.

Section four of the survey asked participants to provide comments about the most and least helpful aspects, one thing they still need information about, and suggestions for the overall WebEx program. When asked to indicate the most helpful aspect, 43 individuals responded, and the majority of them found the networking across divisions to be the most helpful aspect of the program. Other helpful aspects included collaboration among teams and research-based resources.

Participants were asked to indicate the one least helpful aspect of the WebEx program; 36 participants responded to this item. Although no one clear hindrance to the program emerged, several of the comments focused on time. Participants felt the program should begin sooner in the year or possibly during the summer months. They also felt there was too much downtime during the sessions, and some sessions did not begin on time or extended longer than scheduled. Participants also saw the need for differentiated content. One respondent said, “It did not differentiate upon the current needs of each division.” Still other participants found the lack of face-to-face interaction difficult. “The WebEx sometimes left you disconnected due to the inability to see and respond to other participants,” indicated one respondent.

Other least helpful aspects mentioned by participants included too much talking on the part of some groups, homework assignments, technical difficulties, and the format of the WebEx sessions. Four participants indicated that the entire WebEx program was beneficial, and they found all aspects helpful.

Next, participants were asked if there was any information they still needed about the overall WebEx program, and 22 individuals responded to this item. Comments were varied and are listed below.

- How to move division away from “how we’ve always done it,” to effective quick change. It’s too easy for division to revert to its old practices.
- Mechanics of connections between central and school level.

- Next steps.
- Always need to learn more about school improvement and what works.
- Getting the best teachers on the bus.
- Systems for cataloging and sharing best practices across the district.
- Research based strategies for instruction.
- Increasing parental involvement in high poverty rural school.
- Interventions that are most successful.
- Incentives for hard to staff school personnel.
- Additional strategies to get us over the hump!
- Disconnect in curriculum between middle school math and elementary math.
- Data interpretation.
- Collection of evidence when doing walkthroughs and a system to have real time data and feedback.
- How to determine effectiveness of individual intervention when interventions are layered.
- Monitoring.
- Working with leadership; helping principals understand their role in monitoring and uniting staff.
- Finding and retaining teachers.
- I believe expanded version of all topics could be helpful. The “Division Direction of Improvement Planning” needs constant emphasis and support from VDOE.
- Fidelity.
- Did we lose sight of the conditional school during this year’s process? Do we need to focus in on one or two aspects rather than six?
- Review.

Lastly, participants were asked if they had any suggestions about the overall WebEx program, and 37 participants offered suggestions. The majority of the comments related to collaboration among divisions. Several of the respondents felt there should be more time to share ideas and successes across divisions. One participant said, “Increase the amount of time for district to district conversations. Decrease the amount of time for faculty/VDOE discussion.” Other respondents suggested adding two to three face-to-face meetings throughout the year.

Other suggestions offered by participants included differentiating content based on division need, starting the program earlier in the year, creating online discussion boards, making it mandatory for principals and supervisors to participate, and offering more direct instructions for the process.

## CII Feedback Form

WebEx initiative participants were asked to provide feedback to five open-ended items regarding the design and use of the online tool, looking ahead to an online tool for schools, and supporting effective school use of the tool. Participants completed one form per table. Nine completed forms were collected and used in this analysis.

**Design and use of the online tool.** The first question asked participants to describe any strengths of the online tool. Nine groups provided comments. Several of the groups indicated that the organization or structure of the online tool was a strength. One group said, “The structure of the tool enabled us to first determine the desired state of performance, self-assess where we are (environmental scan), and then develop strategies with accountability that move us from our current state to our desired state.” A few of the groups mentioned the clear and concise objectives. One group saw the opportunity to network with other districts about issues and concerns as a strength. Another group noted the ability to participate as a division, and see and hear the information at the same time. Other strengths mentioned were high-quality resources, the ability to print as you go, the ease to access and navigate, and the alignment with corrective action plans.

The next question asked participants to describe any weaknesses of the online tool. Nine groups responded. Several of the groups indicated weaknesses regarding technical aspects of the tool, such as the need for more flexibility in adding team member names, inability to print all information on a screen and cut and paste, system connection issues, and the difficulty of saving information. Other groups felt the format of the online tool needed improvements. One group said, “Initially, navigating through the tool was often frustrating—especially the need to work three different screens to complete the work for each indicator.” Other weaknesses cited were the inability to see all indicators at the beginning, the need for an in-depth definition of the indicator, confusion between required indicators and the full list, insufficient time, lack of professional development on how to use the system, and the objectives being numbered differently from the CII objectives.

Participants were then asked to provide suggested improvements for the design or use of the online tool. Nine groups provided suggestions. Several of the groups mentioned the need for a manual or help menu and acknowledged that the forthcoming manual would be very helpful. A few groups suggested an overview of the program. One group said, “We did not understand the big picture and often found that we had to provide data after we began to complete the form. We had to stop, regroup, then continue—so it took more time than it should have.” Two groups had comments regarding the coaching comments. One group felt that this feature would address many concerns, and the other group was interested in knowing who would enter those comments. Groups offered the following additional suggestions: include only a set number of objectives, develop a “save” button for all tasks, incorporate more videos, improve the print function, and use less lecture and more interaction.

**Looking ahead to an online tool for schools.** Participants were given the opportunity to look at version 1.0 of the online tool for schools and then share their reactions. Seven of the groups provided comments. Five of the groups provided positive comments and felt the tool would be useful with schools. One of those groups said, “The online tool for schools was user-friendly. The organization of the site allows users to quickly select items of their choice.” The other groups felt that the online tool still needed more explanation of the process and also needed to be more interactive for users.

**Supporting effective school use of the tool.** Last, participants were asked what supports still were needed to help their schools make effective use of the tool and the school improvement process it’s designed to encourage. All of the groups provided comments. Several of the groups indicated additional training and information about the program. Two groups mentioned time for implementation, and two groups indicated more communication would be beneficial. One group provided an idea, “A link to provide for interactive dialogue (e.g., opportunity to e-mail a specific individual to gain further insight in implementation challenges that those individuals already conquered).” One group felt inclusion of principals would be helpful, and another group said it should be mandatory for division teams to report out to the board.

### **3-2-1 Activity for Information Sharing**

In preparation for the closeout meeting, division teams were asked to complete a task (a 3-2-1 Activity) and to share the resulting data during the June 20 meeting. Teams were asked to list three successes their division had accomplished this school year, two barriers their division had overcome, and one thing they had learned during a WebEx session that was especially helpful to them. Division teams were also asked to indicate a question that was still unanswered.

Common successes were found across many of the divisions. Each of the successes listed below was mentioned by at least two school divisions (i.e., the division had accomplished this during the past school year).

- Reading and literacy programs were strengthened.
- Professional development schedules were changed and content was refocused and targeted.
- Increases in student achievement were noted.
- A smooth transition of leadership
- A focus on working with teachers to use data
- Strengthened and improved school assessments
- Pacing guides were strengthened.
- The provision of a better climate for staff and students was emphasized.
- A focus on early, intensive remediation
- Increased collaboration
- Most participants were enthusiastic and participated wholeheartedly.

However, the most common successes experienced across divisions were found in their focus on delivering a consistent message and their focus on developing a shared understanding, which most divisions felt led to an increase in purposeful collaboration.

In addition to sharing the three successes, divisions were also asked to indicate two barriers their division had overcome this past school year. Several common barriers could be found across divisions. Some divisions felt they had overcome the following barriers:

- Middle school math scores
- Providing planning time for teachers, particularly elementary school teachers
- The inability to have frank and honest discussions about student achievement
- Teaching teachers to use data
- The lack of experienced teachers and principals due to turnover issues
- Lack of collaboration among staff and central office support personnel
- Issues of fidelity to implementation
- Low expectations from teachers and local school boards
- Having so many new teachers and new staff in leadership positions
- Reallocation of resources in the middle of the year

Participating divisions were also asked to indicate one thing they had learned during the WebEx sessions that had been especially helpful to them. Again, responses varied, but new knowledge gained across divisions also revealed some commonalities. Some divisions felt that they had learned about the following:

- Importance of early, intensive intervention
- Need for purposeful dialogue
- Need for an emphasis on fidelity of implementation
- Different variety of assessments of progress monitoring tools available for their use
- Crucial need for networking and collaboration with colleagues
- Improvement process
- Quick Win method
- All seem to be in the same boat and we can learn a lot from each other

As with the delivery of any initiative, questions almost always remain. When asked to indicate what question they still have unanswered, the following questions or statements of need were listed:

- What will the data show?
- What outstanding commitment to the DOE do we still have and what is their commitment to us?

- What additional resources are available to do the work we need to do?
- How do we go about developing and implementing effective incentives?
- I still have concerns over math scores and the disconnect between elementary and middle school math curriculums.
- What other funding options are available to recruit and retain highly qualified teachers, particularly in math and for middle school?
- I still need more Quick Wins.
- How do we get high poverty parents interested in their child's education?
- I need information on the Clinical Faculty model.
- What are effective strategies that have been proven successful for maintaining fidelity that can be coupled with strategies implemented during 2007-08?

### Overall Summary

A review of the three data sources collected at the June 20 closeout meeting provides a snapshot of how Virginia WebEx participants perceive this work. For the most part, respondents appear satisfied with the content and reported that the materials appear to be authoritative and based on best practices. Respondents also appear satisfied with WebEx processes, but express some concern about the format of the presentation style and the homework assignments. Respondents also seem to have found value in the sessions provided. The Web tool appeared to be well received, and respondents indicated that the tool has helped them focus or structure their improvement plans. Respondents appear to be concerned about some technical aspects of the tool and advise that additional training on the tool would be helpful. Overall, the WebEx work appears to be well received by the division teams, and respondents appear open to the next phase of this work. The networking and collaboration aspects of this work appear to be very well received, and respondents indicate this aspect of the work is especially helpful. Two concerns emerge across the feedback: respondents hope that the work could begin earlier in the school year than it did this past year and indicate they need more information on resource reallocation. Many respondents also appear to believe that this initiative has already impacted or will impact student achievement.

# Board of Education Agenda Item

Item: \_\_\_\_\_ E. \_\_\_\_\_

Date: September 25, 2008

**Topic:** Report on Petersburg City School's Implementation of the Memorandum of Understanding and Findings of the Division-Level Review

**Presenter:** Dr. Kathleen M. Smith, Director, Office of School Improvement, Division of Student Assessment and School Improvement

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## Origin:

\_\_\_ Topic presented for information only (no board action required)

\_\_\_ Board review required by

\_\_\_ State or federal law or regulation

\_\_\_ Board of Education regulation

\_\_\_ Other: \_\_\_\_\_

Action requested at this meeting    \_\_\_ Action requested at future meeting: \_\_\_\_\_

## Previous Review/Action:

\_\_\_ No previous board review/action

\_\_\_ Previous review/action

date \_\_\_\_\_

action \_\_\_\_\_

## Background Information:

The Standards of Quality require local school boards to maintain fully accredited schools and to take corrective actions for schools that are not fully accredited.

§ [22.1-253.13:3](#). Standard 3. Accreditation, other standards and evaluation.

...Each local school board shall maintain schools that are fully accredited pursuant to the standards of accreditation as prescribed by the Board of Education. Each local school board shall review the accreditation status of all schools in the local school division annually in public session. Within the time specified by the Board of Education, each school board shall submit corrective action plans for any schools within its school division that have been designated as not meeting the standards as approved by the Board.

In October 2004, the Virginia Board of Education (BOE) established criteria for identifying low-performing school divisions to undergo a division-level academic review. Petersburg City Public

Schools met the criteria for division-level academic review as indicated in Section 22.1-253.13:3. Standard 3. Accreditation, other standards and evaluation:

...When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board a corrective action plan, consistent with criteria established by the Board and setting forth specific actions and a schedule designed to ensure that schools within its school division achieve full accreditation status. Such corrective action plans shall be part of the relevant school division's comprehensive plan pursuant to Section [22.1-253.13:6](#).

In 2004, recognizing the need for technical assistance, the Petersburg School Board requested a division-level review and assistance from the Virginia Department of Education (VDOE). Petersburg Public Schools and the Virginia Board of Education (BOE) signed an initial memorandum of understanding (MOU) detailing the review process on April 21, 2004. Petersburg Public Schools has been in division-level review status since 2004 and has reported to the BOE regularly on the status of implementing the corrective action plan and the terms of the initial MOU. The VDOE has provided ongoing technical assistance and monitored the implementation of the division's corrective action plan.

Based on 2005-2006 assessment results and the resulting accreditation and federal adequate yearly progress (AYP) ratings of the division and its schools, Petersburg Public Schools entered into a second memorandum of understanding on November 20, 2006. This MOU with the BOE required Petersburg Public Schools to continue in division-level academic review status and participate in an academic review process prescribed by the BOE.

Additionally, Section 8 VAC 20-131-300 of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (SOA), adopted by the Board in September 2006, requires school divisions with Accreditation Denied schools to enter into a MOU with the BOE and implement a corrective action plan to improve student achievement in the identified schools. Since Petersburg Public Schools have schools in accreditation denied status for the 2007-2008 academic year based on 2006-2007 results, the Board of Education determined that the MOU for division-level academic review would also serve as the MOU to satisfy Section 8 VAC 20-131-310. As a part of this MOU, a corrective action plan was developed.

The Petersburg School Board and Central Office staff adopted five key priorities for improving student achievement across the school division, ensuring alignment of resources with these priorities for improving student achievement, and holding the Board and staff accountable for results. These priorities are aligned with the expectations in this MOU and the following areas of focus:

- Student Achievement
- Leadership Capacity
- Teacher Quality
- Communication with all Stakeholders
- Safe and Secure Environment

The following performance objectives were established in the MOU:

“In 2007-2008, Petersburg Public Schools will:

1. Meet AYP requirements in at least seven (7) schools by achieving established benchmarks or through the ‘safe harbor’ method for all subgroups.
2. Achieve full accreditation in at least five (5) schools.”

The BOE implemented a provision in the Appropriation Act that permitted it to authorize an efficiency review as part of a division-level academic review process. As a part of the MOU, Petersburg Public Schools was required to incorporate 40 percent of the recommendations of the efficiency review by January 1, 2008, and half of the recommendations by January 1, 2009.

As a result of the efficiency review completed on January 10, 2007, by MGT of America, Inc., 90 recommendations were indicated, 38 of which were accompanied by fiscal implications. Full implementation of the recommendations in this report would generate a total savings of \$34,620,950 over a five-year period. On July 24, 2007, Petersburg Public Schools reported to the School and Division Accountability Committee of the BOE which recommendations had been fully implemented, those which were in progress, and those that were to be done. A proposed timeline for completion was provided for each recommendation that was in progress or not yet started. Another update was provided on October 17, 2007, to the School and Division Accountability Committee.

As required by the MOU, the BOE and the VDOE assigned a Chief Academic Officer (CAO) to work with the superintendent and administrative staff to coordinate and monitor the implementation of processes, procedures, and strategies associated with the corrective action plan resulting from the MOU. The CAO coordinates with VDOE offices to provide technical assistance in support of the MOU and corrective action plan. The CAO has administrative authority over processes, procedures, and strategies that are implemented in support of the MOU and funded by targeted federal and state funds with subsequent review and approval by the Petersburg School Board.

The MOU also indicates key administrative responsibilities to raise student achievement. One of these responsibilities includes teacher quality. As indicated in the MOU, the central office leadership team under the direction of the CAO or designee is to develop and monitor individual action plans to reduce provisional licenses for teachers and implement a research-based hard-to-staff incentive program. The MOU requires Petersburg Public Schools to commit to hiring personnel who are the most qualified for the position vacancy.

The MOU requires the Petersburg School Board to provide a summative report on progress made in meeting or exceeding MOU agreements and expectations to the BOE and the VDOE, as requested. These reports have been provided to the Accountability Committee for Schools and Divisions on February 27, 2007, May 30, 2007, July 24, 2007, October 17, 2007, January 9, 2008, April 23, 2008, and May 21, 2008.

### **Summary of Major Elements:**

#### Academic Achievement

The MOU set specific accountability targets for each of three years beginning in 2007 with assessments from 2006-2007. The division has failed to meet accreditation targets set forth in the MOU for two consecutive years. For the 2008-2009 accreditation cycle and AYP ratings, the achievement target was

having at least seven schools making adequate yearly progress (AYP) and five schools meeting the status of fully accredited. By 2009, the accountability target as indicated in the MOU is that no schools will remain in accreditation denied status. Based on preliminary data for 2008-2009, one of the seven schools will remain fully accredited, one will return to accredited with warning status, and five will remain in accreditation denied status, as compared to two schools in the previous year.

<b>School Name</b>	<b>Preliminary Accreditation Status in 2008</b>	<b>Subjects Warned in 2006</b>	<b>Subjects Warned in 2007</b>	<b>Preliminary Data Indicates Subjects Warned in 2008</b>
A. P. Hill Elementary School	Accreditation Denied	Warned in English, Mathematics, History, Science	Warned in English, Mathematics, Science	Warned in English, Mathematics, History, Science
J. E. B. Stuart Elementary School	Accreditation Denied	Warned in English, Mathematics	Warned in English, Mathematics	Warned in English, Science
R. E. Lee Elementary School	Fully Accredited	Warned in Mathematics	Not Warned	Not Warned
Walnut Hill Elementary School	Accredited with Warning	Not Warned	Not Warned	Warned in English
Peabody Middle School	Accreditation Denied	Warned in English, Mathematics, History, Science	Warned in English, Mathematics, History, Science	Warned in English, Mathematics, History, Science
Vernon Johns Middle (Jr. High) School	Accreditation Denied	Warned in English, Mathematics, History, Science	Warned in English, Mathematics, History	Warned in English, Mathematics, History
Petersburg High School	Accreditation Denied	Warned in Mathematics, History, Science	Warned in Mathematics, Science	Warned in Mathematics, Science

One of the seven schools made AYP in 2008-2009, as compared to two schools in the previous year. Two schools entered Year 5 of school improvement after not making AYP for six consecutive years, and one school entered Year 7 of school improvement after not making AYP for eight consecutive years. Two of these schools, including the school in Year 7 of school improvement, are middle schools. AYP results for all schools are summarized below:

<b>School Name</b>	<b>AYP Status 2008</b>	<b>Sanction</b>
A. P. Hill Elementary School	Did not Make AYP Year 2 for English: Reading Did Not Make AYP for Mathematics	Public School Choice and Supplemental Education Services (SES)
J. E. B. Stuart Elementary School	Did Not Make AYP Year 5: English: Reading Year 1 Holding: Mathematics	Implement Alternative Governance in addition to Choice, SES, and Corrective Action

<b>School Name</b>	<b>AYP Status 2008</b>	<b>Sanction</b>
R. E. Lee Elementary School	Made AYP	None
Walnut Hill Elementary School	Did Not Make AYP English: Reading Did Not Make AYP for Mathematics	None
Peabody Middle School	Did Not Make AYP Year 5: English: Reading	Implement Alternative Governance in addition to Choice, SES, and Corrective Action
Vernon Johns Middle (Jr. High) School	Year 5: English Reading Year 6: Mathematics	Implement Alternative Governance in addition to Choice, SES, and Corrective Action
Petersburg High School	Year 4 Holding: Reading: English Year 5: Mathematics	No additional corrective actions

Pass rates based on 2005-2006, 2006-2007, and 2007-2008 Standards of Learning assessments follow:

**A. P. Hill Elementary**

<b>AYP pass rates</b>	<b>2006</b> <i>(based on Assessments in 2005-2006)</i>	<b>2007</b> <i>(based on Assessments in 2006-2007)</i>	<b>2008</b> <i>(based on Assessments in 2007-2008)</i>
English	54	59	61
Mathematics	49	64	64
Science	44	58	62
Writing	(SOA) 48	64	58
History	(SOA) 51	67	61

**J.E.B. Stuart Elementary**

<b>AYP pass rates</b>	<b>2006</b> <i>(based on Assessments In 2005-2006)</i>	<b>2007</b> <i>(based on Assessments in 2006-2007)</i>	<b>2008</b> <i>(based on Assessments in 2007-2008)</i>
English	64	66	69
Mathematics	63	50	73
Science	68	63	68
Writing	(SOA) 66	53	51
History	(SOA) 74	68	76

**Robert E. Lee Elementary**

<b>AYP pass rates</b>	<b>2006</b> <i>(based on Assessments In 2005-2006)</i>	<b>2007</b> <i>(based on Assessments in 2006-2007)</i>	<b>2008</b> <i>(based on Assessments in 2007-2008)</i>
English	67	79	78
Mathematics	65	85	77
Science	69	77	75
Writing	77	64	72
History	(SOA) 76	81	76

**Walnut Hill Elementary**

<b>AYP pass rates</b>	<b>2006</b> <i>(based on Assessments In 2005-2006)</i>	<b>2007</b> <i>(based on Assessments in 2006-2007)</i>	<b>2008</b> <i>(based on Assessments in 2007-2008)</i>
English	78	77	72
Mathematics	78	77	64
Science	71	73	70
Writing	(SOA) 77	74	66
History	(SOA) 77	75	59

**Peabody Middle**

<b>AYP pass rates</b>	<b>2006</b> <i>(based on Assessments In 2005-2006)</i>	<b>2007</b> <i>(based on Assessments in 2006-2007)</i>	<b>2008</b> <i>(based on Assessments in 2007-2008)</i>
English	46	45	52
Mathematics	25	28	41
Science	63	62	66
Writing	(SOA) 70	49	62
History	(SOA) 27	35	46

**Vernon Johns Junior High**

<b>AYP pass rates</b>	<b>2006</b> <i>(based on Assessments in 2005-2006)</i>	<b>2007</b> <i>(based on Assessments in 2006-2007)</i>	<b>2008</b> <i>(based on Assessments in 2007-2008)</i>
English	54	56	58
Mathematics	34	39	50
Science	63	74	71
Writing	(SOA) 70	61	65
History	(SOA) 45	47	58

## Petersburg High

<b>AYP pass rates</b>	<b>2006 (based on Assessments In 2005-2006)</b>	<b>2007 (based on Assessments in 2006-2007)</b>	<b>2008 (based on Assessments in 2007-2008)</b>
English	76	76	87
Mathematics	42	50	69
Science	53	61	64
NCLB Graduation Indicator	48	57	51
Writing	(SOA) 81	70	82
History	(SOA) 65	78	76

Data for the division is summarized as follows:

<b>AMO</b>	<b>Subgroup</b>	<b>Data Source</b>	<b>Students Counted</b>	<b>Total Students</b>	<b>Rate</b>	<b>AMO</b>	<b>AMO Met</b>
English Performance	KG-5 <sup>th</sup> Grade Students	Current	659	964	68	77	No
		Previous	449	697	64	73	No
	6 <sup>th</sup> -8 <sup>th</sup> Grade Students	Current	516	977	53	77	No
		Previous	167	395	42	73	No
	9 <sup>th</sup> -12 <sup>th</sup> Grade Students	Current	250	288	87	77	Yes
		Previous	244	309	79	73	Yes
Mathematics Performance	KG-5 <sup>th</sup> Grade Students	Current	646	964	67	75	No
		Previous	486	702	69	71	No
	6 <sup>th</sup> -8 <sup>th</sup> Grade Students	Current	369	920	40	75	No
		Previous	194	387	50	71	No
	9 <sup>th</sup> -12 <sup>th</sup> Grade Students	Current	513	730	70	75	No
		Previous	479	897	53	71	No

### Highly-Qualified Teachers

Another area of concern addressed in the current MOU is the limited number of highly-qualified teachers employed by the division as well as the number of teachers who are provisionally licensed and the number of long-term substitutes employed as teachers in core content areas. The MOU states that the Petersburg central office leadership, under the direction of the chief academic officer (CAO) will develop and monitor individual action plans to reduce the number of teachers holding a provisional license and implement a research-based hard-to-staff incentive program. Hard-to-staff funding has been provided in the first two years of the MOU; however, results presented at the Senate Finance Committee on December 6, 2007, demonstrated little improvement in the number of provisional or unlicensed teachers employed by the division. The MOU states that Petersburg Public schools will commit to

hiring personnel who are the most qualified for the position vacancy. This data is included as Attachment A. (Attachment A will be provided at the Board meeting.)

### Contingency Restructuring Plan

The MOU specifies that a contingency plan be developed if the schools do not meet school accreditation targets. The MOU states:

*The Petersburg School Board, Virginia Board of Education, and the Department of Education will develop a contingency plan for major restructuring to be in place for the 2007-2008 school year if significant improvements in student achievement and school accreditation do not occur for the 2006-2007 school year. The decision to begin the planning for restructuring will be based on reports provided by Petersburg Public Schools to both the Virginia Board of Education and department staff as well as recommendations made by the CAO throughout the year.*

Although the development of the contingency restructuring plan was implemented one year later than planned in the MOU, a committee of outside experts from universities, community-based organizations working in Petersburg, the chief academic officer (CAO), and department staff met during the 2007-2008 year after assessments given in 2006-2007 resulted in the division not meeting accountability goals of the MOU for two consecutive years. This committee developed an instructional intervention to be led by an outside entity for middle school students and parents (by choice of entry into the intervention) to begin in 2009-2010.

This plan was based in part on the work of Mass Insight Education and the concept of a turnaround zone. The committee agreed that the plan should include an outside partner to develop and implement a comprehensive “school within a school” model for middle grade students. The committee presented this plan at the June 18, 2008, meeting of the Accountability Committee for Schools and Divisions meeting. A copy of the plan for this proposed middle grades model is included as Attachment B. This plan meets the following conditions agreed upon by the Board of Education and Petersburg Public Schools:

1. Alternative governance.
2. Choice option for middle school students and parents.
3. Research-based focus on core content.
4. Recruitment, selection, and supervision of highly qualified personnel by and independent entity.
5. Proven track record of educational success.

Federal school improvement funds that are allocated only to local education agencies (LEA) with schools in improvement are available to cover the start-up costs for program development and implementation planning.

### School Improvement Funding

Since the implementation of the current MOU, Petersburg Public Schools has received \$1.1 million in school improvement funding. In 2008-2009, Petersburg Public Schools will receive \$525,000 in school improvement funds. These funds are used to implement the initiatives indicated in both the MOU and corrective action plan. Conditions for the spending of these funds are included as Attachment C.

## Recommendations

Petersburg Public Schools will report quarterly to the Board of Education student achievement data as prescribed by the Department of Education using the quarterly report form located at the following Web site: <http://www.doe.virginia.gov/VDOE/SchoolImprovement/>.

Petersburg Public Schools will report quarterly to the Board of Education a breakdown of teacher quality data as prescribed by the Department of Education, including teachers' progress toward full licensure and achieving highly qualified status, as indicated in Attachment A.

As specified in the MOU, the Board of Education requests the Petersburg City School Board to plan for the implementation of the contingency restructuring proposal in the 2009-2010 school year as described in Attachment B and authorizes the Department of Education to assist Petersburg Public Schools in such planning by providing available federal resources.

### **Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education accept the recommendations for first review.

### **Impact on Resources:**

The department will provide available federal school improvement funds for the contingency restructuring plan.

### **Timetable for Further Review/Action:**

Petersburg Public Schools will provide data as indicated in the required quarterly report on October 15, 2008. This data will be reviewed by the Accountability Committee for Schools and Divisions on October 23, 2008.

Information on Teacher-Quality  
Will Be Provided at the  
Board Meeting

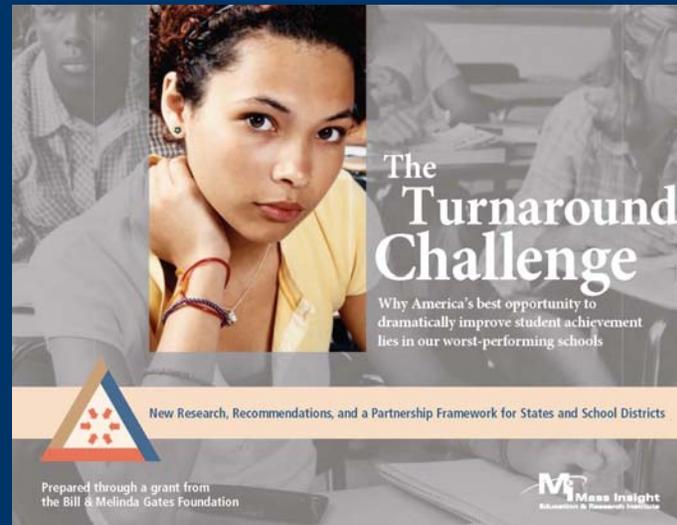
# **Petersburg Contingency and Restructuring Work Group**

**June 18, 2008**

# Committee's Charge Was Limited in Scope to the Middle Grades 6-8

- Alternative governance
- Choice option for middle school students and parents
- Research-based focus on core content
- Recruitment, selection and supervision of highly qualified personnel by an independent entity
- Proven track record of educational success

# Meeting *The Turnaround Challenge*

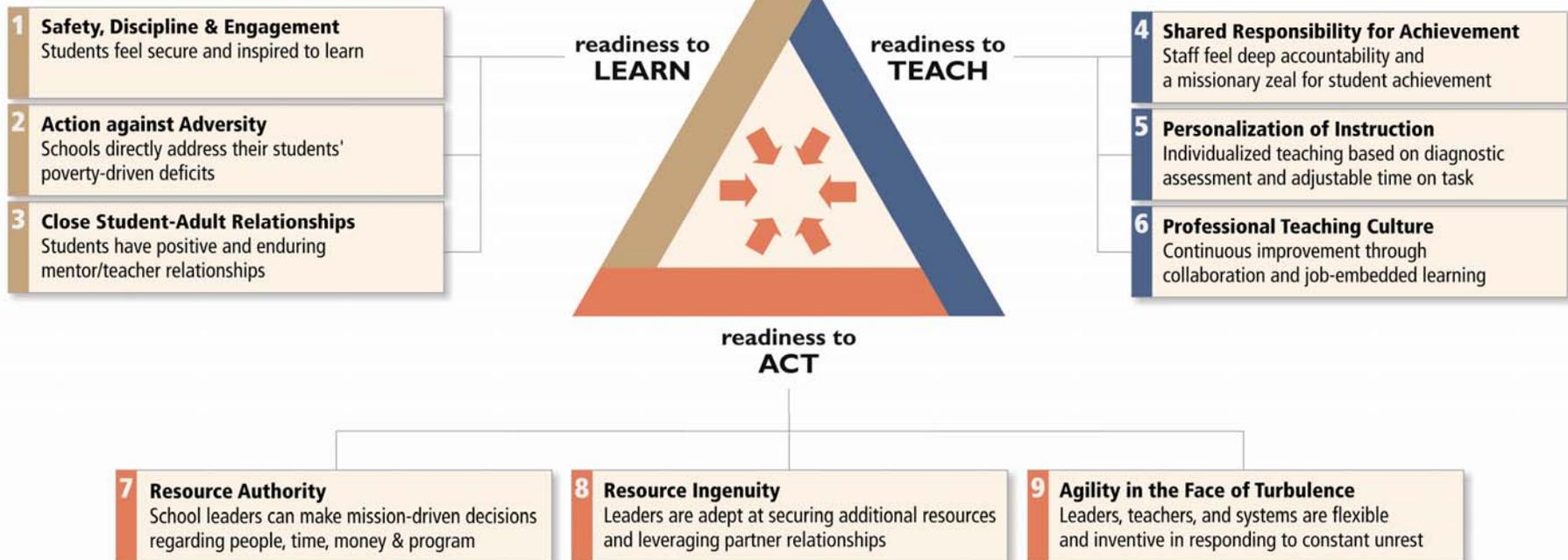


## Analysis and Recommendations from the report produced by Mass Insight Education & Research Institute, Inc.

— Developed under a grant from the Bill & Melinda Gates Foundation —

# How do high-performing, high-poverty schools do it? They foster students' *readiness to learn*; focus staff's *readiness to teach*; and expand their *readiness to act*.

## HPHP READINESS MODEL





## **Why has so little fundamental change occurred in failing schools to date?**

**Lack of leverage: No real help from NCLB; incremental reforms remain the common choice**

**Lack of capacity: In state agencies, districts, schools, partners**

**Lack of exemplars: No successful models at scale, no real consensus even on definitions**

**Lack of public will: Failing schools have no constituency; hence, insufficient funding to date**



# These gaps have led to state strategies that are insufficient to meet the challenge:

## Insufficient incentives for educators to choose major change

- **Too few *positive incentives***: reasons to opt into real transformation
- **No *negative incentives***: unattractive consequences for inaction
- **Lack of aggressive, clear performance targets**

## Insufficient comprehensiveness, intensity, and sustainability

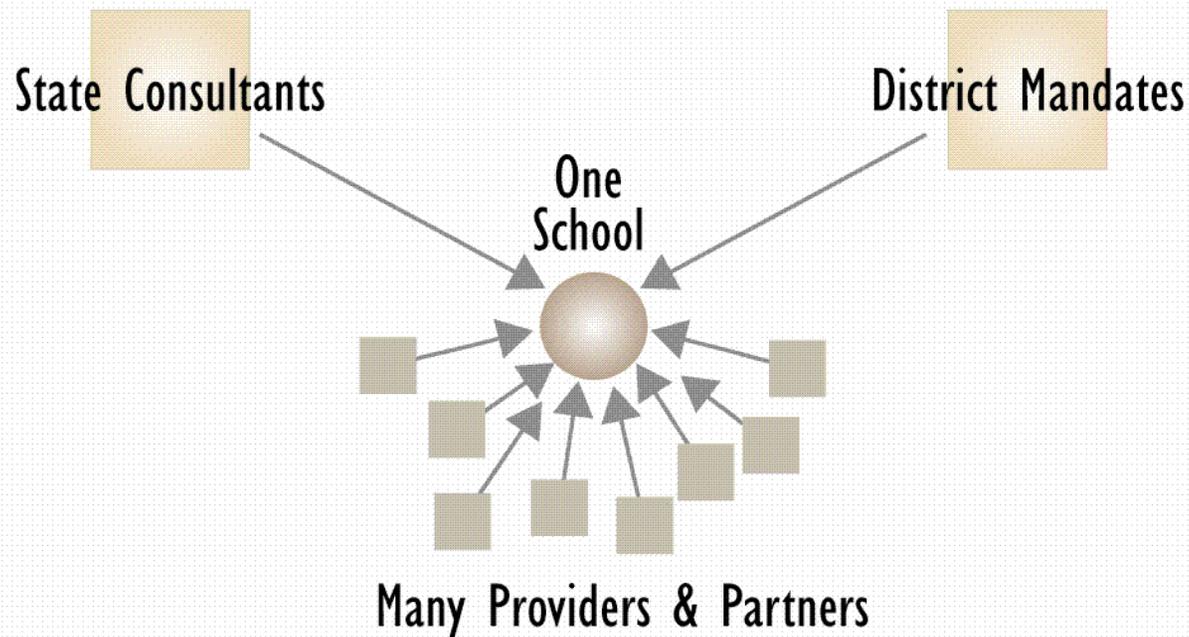
- **No state engagement in changing *conditions*** – rules for adults
- **No overall “people strategy”** – developing *capacity* for turnaround
- **No school *clustering***: limits effectiveness and scale
- **All “loose,” no “tight”**: e.g., more systematic on curriculum, PD
- **Limited partner support**: “light touch,” small scale, fragmented
- **Limited district connection to school improvement effort**

## Insufficient commitment from the state

- **Lack of high-visibility public and private sector commitment**
- **SEA lacks sufficient flexibility, authority, resources**

# Capacity-Building: Addressing the “projectitis” afflicting school reform

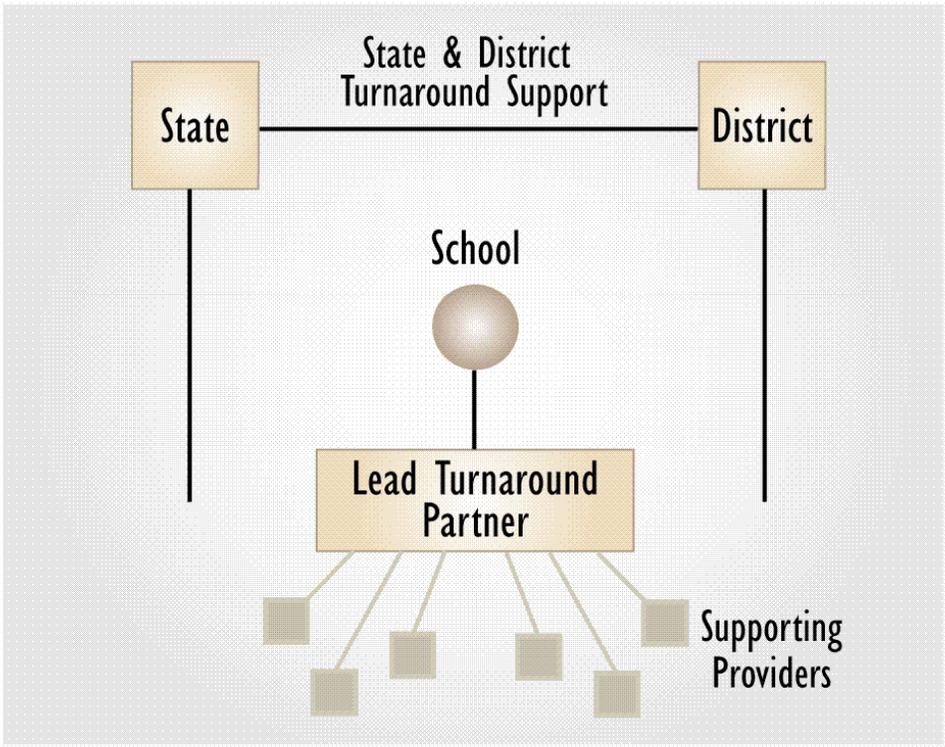
“Old World” Intervention Capacity & Roles:  
Fragmented, Competing Improvement Projects



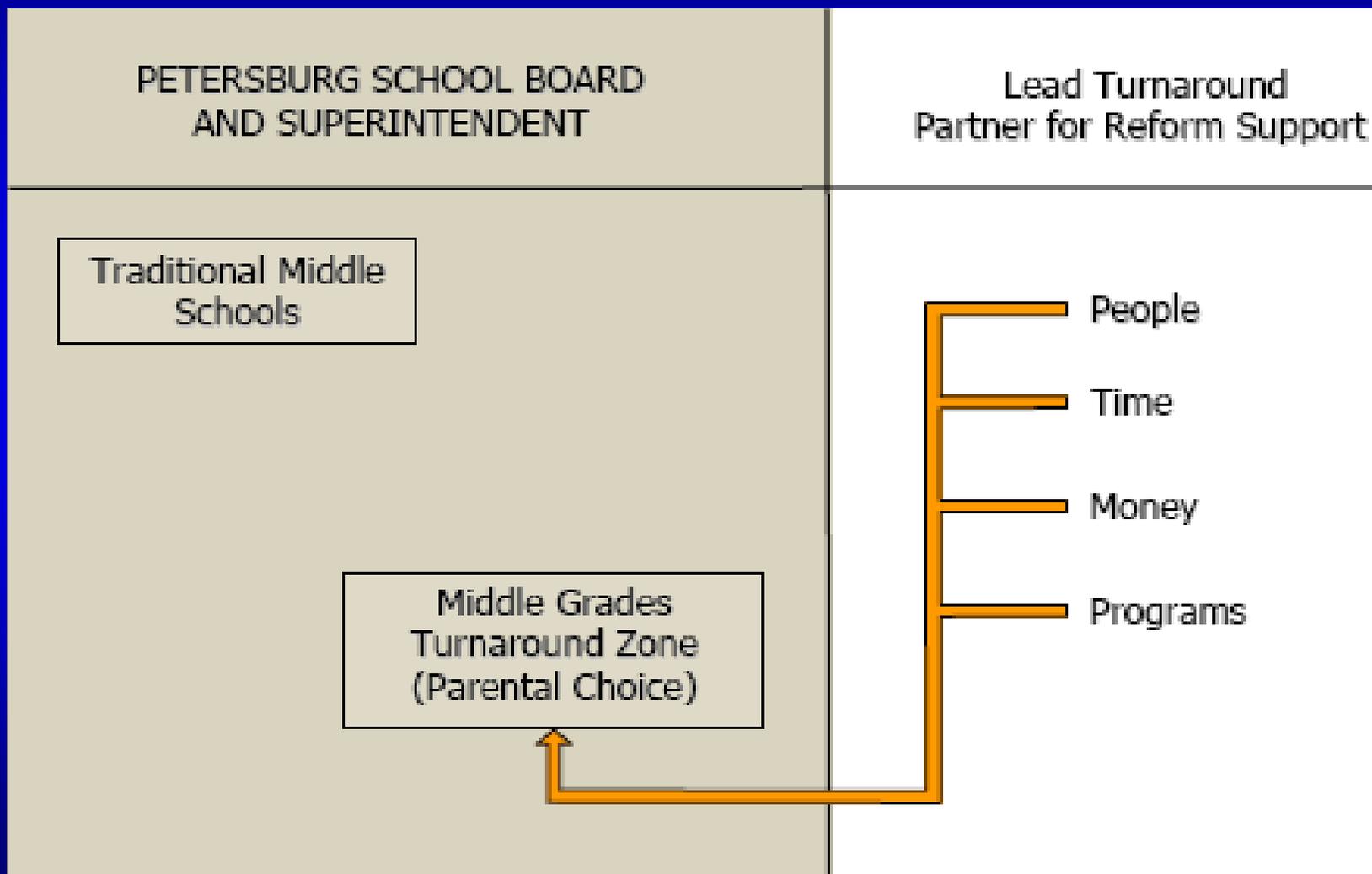


# A new model: deeply embedded lead turnaround partners, integrating the work of other providers

## "New World" Capacity & Roles within a Comprehensive Turnaround Framework



# “An outside-the-system approach inside-the-system ”



# Petersburg's Middle Grades Turnaround Zone

- Driven by parental choice to provide all students with an opportunity to attend the “turnaround zone”
- Shared accountability between the Petersburg School Board and the Lead Turnaround Partner
- Led by an Lead Turnaround Partner with a proven record of success
- Led by an Lead Turnaround Partner that provides deep, systemic instructional reform
- Centered on the Lead Turnaround Partner providing an outside-the- system approach inside-the-system

# Petersburg's Middle Grades Turnaround Zone, Continued

- Facilitated through a partnership with the Parents, Lead Turnaround Partner, Petersburg School Board, Virginia Department of Education, and Virginia Board of Education through a Memorandum of Understanding
- Funding for the “turnaround zone” is provided by the Petersburg School Board on a prorated per pupil cost which is aligned to the cost per pupil of non-turnaround zone middle school students – but finances remain with Petersburg School Board
- Employ research-based strategies that provide an immediate and dramatic turnaround in student achievement.

# **Lead Turnaround Partner Changing Conditions- People**

- **Recruit and select teachers and a program leader who have a proven record of success of increasing student achievement**
- **Structure teacher and principal contracts**
- **Develop and engage teachers and principal in professional development aligned to programmatic goals.**
- **Promote student motivation for learning**

# **Lead Turnaround Partner Changing Conditions- People, Continued**

- **Secure parental commitment and involvement through school choice**
- **Promote parental capacity to support student engagement, motivation, and learning within school, at home and in the community**
- **Secure community support to garner human resources needed for reform**
- **Evaluate teacher and principal performance and outcomes and make staffing recommendations accordingly.**

# **Lead Turnaround Partner Changing Conditions- People, Continued**

- **Develop constructive relationships with existing school personnel**
- **Expand on existing community commitment and support to garner resources needed for the reform**

# **Lead Turnaround Partner Changing Conditions - Time**

- **Change the school calendar according to student and program needs, for example, year-round schools or extending the length of the school day**
  - **Require commitment from parents to allow for additional time for instruction (such as after-school support)**
  - **Require commitment from teachers to allow for additional time for instruction and professional development**

# **Lead Turnaround Partner Changing Conditions - Program**

- **Maintain authority and autonomy over programs**
- **Provide comprehensive, coherent, manageable and integrated instructional and support programs**
- **Maintain authority to determine which programs are used and which programs are to be eliminated**
- **Align curriculum, instruction, classroom formative assessment and sustained professional development to build rigor, student-teacher relationships, and provide relevant instruction that engages and motivates students**

# **Lead Turnaround Partner Changing Conditions – Program, Continued**

- **Organize programming to engage students' sense of adventure, camaraderie, and competition**
- **Develop and implement evidence-based discipline programs that minimize time out of school and/or class**
- **Secure supporting partners to address social, emotional and behavioral issues (e.g., over-age students)**
- **Collaborate, identify and secure adequate materials from LEA resources (such as Algebra Readiness Diagnostic Assessment)**
- **Identify and secure outside resources needed in the reform effort**

# Lead Turnaround Partner - Money

- **Develop a budget based on available prorated per pupil amounts of local, basic SOQ, school improvement, appropriate Title monies, and special education funding in addition to other sources identified and aligned specifically for the turnaround zone**
- **Basic SOQ funding provided by the Petersburg School Board – but the responsibility for finances remains with the Petersburg School Board**
- **Seek outside funding from the greater community (business, private foundations, federal, state sources) to support the reform effort**

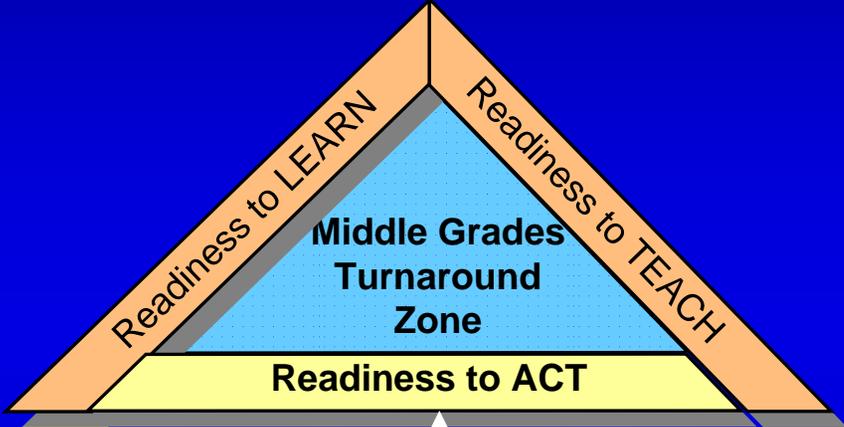
Virginia State Board of Education

Parental Choice

Petersburg School Board

Virginia Department of Education-- Chief Academic Officer

Superintendent and Division Staff



Lead Turnaround Partner for Reform Support

People: Authority over selection, compensation and work rules

Time: Authority over scheduling, longer day, longer year

Program: Flexibility to shape program to students' needs and turnaround priorities

Money: More budget flexibility, more resources

# Did We Meet the Charge?

- ✓ **Alternative governance**
- ✓ **Choice option for middle grade students and parents**
- ✓ **Research-based focus on core content**
- ✓ **Recruitment, selection and supervision of highly qualified personnel by an independent entity**
- ✓ **Organization with track record of educational success**



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF EDUCATION

P.O. BOX 2120

RICHMOND, VA 23218-2120

September 10, 2008

Dr. James M. Victory  
 Division Superintendent  
 Petersburg City Public Schools  
 255 South Boulevard, East  
 Petersburg, VA 23805-2700

Dear Dr. Victory:

The Virginia Department of Education, Office of School Improvement, has received the school improvement plans and tentative budgets from the Title I schools in your division that were in improvement status during the 2007-2008 school year. The Office of School Improvement focuses special attention on divisions that have schools in advance stages of Title I School Improvement. As a result, school divisions that have schools in years 4, 5, and beyond of improvement status are also receiving a *Conditions of Awards* document (enclosure) for signature by the superintendent. *All components of this document must be addressed before reimbursement requests will be approved by the Virginia Department of Education..*

The *Conditions of Award* contains the following components:

- **Restructuring/Alternative Governance Questionnaire (for year 5 and beyond schools) (Questionnaire located at <http://www.doe.virginia.gov/VDOE/SchoolImprovement/>)**

### Description

Alternative governance is intended to be the structure for the delivery of new and revised data-driven initiatives to improve student performance. Schools must provide a clear description of how alternative governance will be implemented in each identified school, as the reviewed School Improvement Plans have not definitively done so.

This description must also show the alignment of various school reform initiatives. In particular, schools that are also participants in the Partnership for Achieving Successful Schools (PASS) program and/or schools that have been rated *conditionally accredited* or *accreditation denied* under the Standards of Accreditation must align school reform efforts. In addition, the revised budget in the questionnaire must be used to reflect the activities/expenditures associated with the implementation of alternative governance.

The questionnaire provides an opportunity for schools to describe that alignment and related budget.

Dr. James M. Victory  
Page 2  
September 10, 2008

Important Note:

The questionnaire also provides the opportunity for school leadership to discuss the causes of the school's inability to achieve Adequate Yearly Progress to date. The applicable core subject areas and subgroup performance must be discussed as a part of the response to how alternative governance will address academic achievement.

- **Compliance Implementation and Notification Requirements (for year 5 and beyond schools)**

Description

Section 1116(b)(8) of the *No Child Left Behind Act of 2001* clearly outlines implementation and parent/staff notification requirements of the restructuring/alternative governance sanction. Schools must adhere to these requirements.

- **Use of School Improvement Funding (for all school recipients)**

Description

School Improvement funds are made available to assist school divisions with the implementation of School Improvement requirements under Section 1116 and supporting initiatives recommended or approved by the Office of School Improvement at the Virginia Department of Education.

- **Quarterly Reporting of Student Achievement (for years 4, 5, and beyond schools and also for schools that are *conditionally accredited* or *accreditation denied*). (Reports located at <http://www.doe.virginia.gov/VDOE/SchoolImprovement/>).**

Description

The Restructuring Quarterly Report for years 4, 5, and beyond of improvement, *accreditation denied*, or *conditionally accredited* schools focuses the attention of school and central office personnel as well as outside technical assistance providers on the frequent and formal analysis of data as a primary means of addressing the academic deficiencies of the school. The report is to be prepared for the Board of Education on a quarterly basis.

- **Special Professional Development Technical Assistance to Years 4, 5, and Beyond Schools**

Description

The Virginia Department of Education has worked intensively with the Center on Innovation and Improvement, under the leadership of Dr. Sam Redding and the Virginia Foundation for Educational Leadership, to study school restructuring. Schools in years 4, 5, and beyond of School Improvement will be required to attend restructuring on-site and Web Ex staff development technical assistance sessions.

Dr. James M. Victory  
Page 3  
September 10, 2008

The signed *Conditions of Award* document (with the completed questionnaire) is due on September 30, 2008, to the Virginia Department of Education, Office of School Improvement, P. O. Box 2120, Richmond, Virginia 23821-2120, ATTENTION: Brenda Spencer. The questionnaire may also be submitted electronically according to the instructions found within the document.

Authorization for this grant is provided in Title I, Part A, of the Elementary and Secondary Education Act of 1965, as amended by Public Law 107-110, *No Child Left Behind Act of 2001*. The Catalog of Federal Domestic Assistance (CFDA) number for Title I, Part A, is 84.010. This grant is subject to provisions of the Title I, Part A, statute; applicable sections of Title 34 of the Code of Federal Regulations (CFR) in the Education Department General Administrative Regulations (EDGAR); and an audit in compliance with applicable circulars and compliance supplement documents from the federal Office of Management and Budget (OMB).

Questions regarding the *Conditions of Award* may be directed to Brenda Spencer, associate director, at [Brenda.Spencer@doe.virginia.gov](mailto:Brenda.Spencer@doe.virginia.gov) or 804-371-6201. Questions may also be directed to me at [Kathleen.Smith@doe.virginia.gov](mailto:Kathleen.Smith@doe.virginia.gov) or at 804-786-1062.

Sincerely,



Kathleen M. Smith, Ed.D., Director  
Office of School Improvement

KMS/BAS/mb

Enclosures

pc: Dr. Billy K. Cannaday, Jr., Superintendent of Public Instruction  
Dr. Patricia I. Wright, Chief Deputy Superintendent of Public Instruction  
Dr. Dorothea Shannon, Chief Academic Officer  
Roberta Schlicher, Director, Program Administration and Accountability  
Brenda Spencer, Associate Director, Office of School Improvement

**NOTIFICATION OF GRANT AWARD**

<p>1. Name, Address, Phone Number of Grant Recipient:  Dr. James M. Victory  Division Superintendent  Petersburg City Public Schools  255 South Boulevard, East  Petersburg, VA 23805-2700  Payee Number: 120</p>	<p>2. Grant Title/Description:  <b>Title I School Improvement Grant Under the  No Child Left Behind Act of 2001</b></p>	<p>3. DOE Contact Person and Office Phone Number:  Brenda Spencer, Associate Director  Office of School Improvement  (804) 371-6201  <a href="mailto:Brenda.Spencer@doe.virginia.gov">Brenda.Spencer@doe.virginia.gov</a></p>
<p>4. Grant Authority:  Public Law 107-110, Section 1003</p>	<p>5. Grant Award Amount:  A. P. Hill Elem.-\$100,000  J. E. B. Stuart Elem.-\$125,000  Peabody Middle-\$125,000  Vernon Johns Middle-\$175,000  TOTAL: \$525,000</p>	<p>6. Grant Award Number:  S010A070046</p>
<p>7. Grant Award Type:  New <input checked="" type="checkbox"/> Revised <input type="checkbox"/></p>	<p>8. Period of Award:  August 20, 2008 -- September 30, 2009</p>	<p>9. Fund Source:  General <input type="checkbox"/> Federal <input checked="" type="checkbox"/> Special <input type="checkbox"/></p>
<p>10. Special Instructions/Conditions: The School Improvement grant is for school year 2008-2009. Payments will be made on a cost-reimbursement basis. Reimbursements should be submitted quarterly, at a minimum, through the Online Management of Education Grant Awards (OMEGA). The final reimbursement for all the grant funds encumbered by September 30, 2009, should be submitted no later December 1, 2009. There will be no carry-over provision for this grant.</p>		
<p>11. Authorized By: (Name/Title)    Kent Dickey  Assistant Superintendent of Finance</p>	<p>12. Authorized By: (Name/Title)    Shelley Loving-Ryder  Assistant Superintendent, Assessment and School Improvement</p>	<p>13. Date:  August 20, 2008</p>
<p>14. Project Code:  42892</p>	<p>15. Revenue Source Code or CFDA #:  84.010</p>	<p>16. Program/Service Area:  179-01-00</p>
<p>17. Fiscal Year:  July 1, 2007-September 30, 2009</p>		<p>18. Recipient Type:  Subrecipient <input checked="" type="checkbox"/>  Vendor <input type="checkbox"/></p>

Budget Review: *RBW*

**Petersburg City Public Schools**  
School Year 2008-2009

<b>CONDITIONS OF AWARD</b> <b>TITLE I SCHOOL IMPROVEMENT FUNDS</b>
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**Priority Schools: Restructuring/Alternative Governance—Years 4, 5 and Beyond Schools**

School	NCLB School Improvement <i>Mathematics Status</i>	NCLB School Improvement <i>Reading/English Status</i>	NCLB School Improvement <i>Allocation (A07)</i>	PASS Participant	Conditionally Accredited (CA) or Accreditation Denied (D)
Vernon Johns Middle	Year 7	(Year 5)	\$175,000	No	D
Peabody Middle		Year 5	\$125,000	No	D
Stuart Elementary		Year 5	\$125,000	No	D

**Additional School: Year 2 School**

School	NCLB School Improvement <i>Mathematics Status</i>	NCLB School Improvement <i>Reading/English Status</i>	NCLB School Improvement <i>Allocation (A07)</i>	PASS Participant	Conditionally Accredited or Accreditation Denied
A. P. Hill Elementary		Year 2	\$100,000	No	D

**Conditions of Award for All Schools**

**Part I. School Improvement Plans**

<b>Condition 1</b>
--------------------

**Submission and Approval of School Improvement Plans**

School Improvement plans, with a specific focus on subgroup performance in the designated core subject area, must be submitted for all school recipients of School Improvement funds by September 30, 2008. Plans must reflect research-based strategies for addressing student performance in the areas where Adequate Yearly Progress was not met. Plans must be approved by the Petersburg School Board and must be aligned to the individual school budgets. The Chief Academic Officer (CAO) must sign the plans. Plan implementation is to be monitored by the Chief Academic Officer and the School Improvement Coordinator, funded through the Office of School Improvement at the Virginia Department of Education.

## Conditions of Award for Priority Schools

### Part II. Description of Restructuring Alternative Governance for Year 5 and Beyond Schools

#### Condition 2

##### Restructuring/Alternative Governance Questionnaire

Alternative governance is intended to be the structure for the delivery of new and revised data-driven initiatives to improve student performance. **Vernon Johns Middle, Peabody Middle, and Stuart Elementary** schools have multiple designations—year 5 or 6 of improvement and *accreditation denied*. As such and by responding to questionnaire, these schools must describe the alternative governance in each school and how various school reform initiatives associated with each designation interface to generate improved student achievement.

This condition of award must be addressed before the identified schools can receive final approval to expend the awarded school improvement funds. The completed questionnaire is due September 30, 2008, and can be found at <http://www.doe.virginia.gov/VDOE/SchoolImprovement/> on the Virginia Department of Education, Office of School Improvement Web site. Follow the instructions within the questionnaire.

### Part III. Restructuring/Alternative Governance Implementation

#### Condition 3

##### Restructuring/Alternative Governance Implementation Requirements

Not later than the beginning of the school year following the year in which the local educational agency implements restructuring/alternative governance planning, the local educational agency shall implement one of the following alternative governance arrangements for the school consistent with state law:

- Reopen the school as a public charter school;
- Replace all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress;
- Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school;
- Turn the operation of the school over to the state educational agency, if permitted under State law and agreed to by the state; or
- Implement any other major restructuring of the school's governance.

**Condition 4****Notification Requirements**

The local educational agency shall—

- provide prompt notice to teachers and parents whenever restructuring/alternative governance implementation occurs; and
- provide the teachers and parents with an adequate opportunity to—
  - comment before taking any action and
  - participate in developing any plan.

**Part IV. Special Professional Development Technical Assistance to Years 4, 5, and Beyond School**

**Condition 5**

**School Participation in the Center for Innovation and Improvement School Restructuring Project**

The Virginia Department of Education has worked intensively with the Center on Innovation and Improvement, under the leadership of Dr. Sam Redding, to study school restructuring. The book *Restructuring and Substantial School Improvement*, edited by Herbert J. Walberg, has been a major resource and can be found on the Internet at <http://www.centerii.org/survey/downloads/Restructuring%20Handbook.pdf>.

As a condition of award, division staff and school staff from all three schools will participate in the Center's school restructuring initiative. The opening meeting will be held October 10, 2008, at the Williamsburg Marriott, 8:30 a.m. to 3:30 p.m. Hotel room registrations (\$75 plus 10 percent tax rate) must be made by September 12, 2008. The closing meeting will be held on June 18, 2009, at the Sheraton Park South Hotel in Richmond, Virginia. Room registrations (\$89 plus 13 percent tax rate) must be made by May 27, 2009.

School principals with central office staff will participate in the WebEx presentations below. Further information and the date assigned to your division will be confirmed by the central office contacts for your division.

Technical Assistance Activity	Date(s)	Audience
In-service via WebEx for Central Office Staff provided by VFEL and CII for division teams	November 3 December 1 January 12 February 2 March 9 April 6	Central Office Staff to include primary instructional staff for those divisions/staff that did not participate last year.
In-service via WebEx for provided by VFEL and CII for school teams	November 5 or 12 February 4 or 11 March 11 or 18	Principals and other members of the school improvement or oversight committee.

Teacher Training for LEAD teachers in Roanoke or Newport News or Richmond by CII	November 18, 19 or 20 December 9, 10, or 11 January 13, 14, or 15 March 17, 18, or 19	Principals and LEAD teachers (purpose to build leadership)
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Two on-line tools have been developed by the partnership that will monitor and support both school and division progress on established school improvement goals and district improvement goals to support schools in improvement. These tools will also be demonstrated at the October 10, 2008 meeting. (Some of the divisions participated in some of the training related to the In-service via WebEx for Central Office Staff for division teams provided by Virginia Foundation for Educational Leadership (VFEL) and Center for Innovation and Improvement (CII) last year and will not participate in this training for this year, but will participate in the training for school teams and teacher trainings.)

The teacher training opportunities will be facilitated by master teachers from Pennsylvania and Illinois. The purpose of these trainings is to build teacher leadership from within. In challenged schools, instructional leadership is needed from the central office, school administration and in the classroom.

#### **Part V. Use of Funds and Pre-Approval of Reimbursement Requests**

##### **Condition 6**

##### **Approvable Expenditures**

- Each school year 2008-2009 Title I School Improvement grant is to be used *only* to fund the initiatives agreed upon by the Petersburg City Public Schools and the Virginia Department of Education, as documented in the approved school/division budgets and the corresponding School Improvement Plans.
- The purchase of computer equipment must be pre-approved by the Chief Academic Officer and the offices of School Improvement and Program Administration and Accountability at the Virginia Department of Education.
- Revisions to the budgets and applications are to be submitted by the Chief Academic Officer in consultation with the Virginia Department of Education and the School Improvement Coordinator.
- The Virginia Department of Education requires the expenditure of all funds (with quarterly reimbursement submission) by March 1, 2009. The Chief Academic Officer will have the latitude to encumber additional funding for such initiatives as summer professional development after March 1, 2009.

<b>Condition 7</b>
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**Special Requests for Reimbursements Conditions**

- Requests for reimbursements through the Title I office must receive *signature pre-approval* by the Chief Academic Officer in consultation with the School Improvement Coordinator.
- The Virginia Department of Education reserves the right to provide a second signature pre-approval of reimbursement requests before the submission of such through the Online Management of Education Grant Awards (OMEGA) system.

**Part VI. Academic Progress Reporting for Years 4, 5, and Beyond of Improvement, Accreditation Denied or Conditionally Accredited Schools**

<b>Condition 8</b>
--------------------

**Restructuring Quarterly Report**

**Vernon Johns Middle, Peabody Middle, and Stuart Elementary**, as Title I schools in restructuring/alternative governance status and as *accreditation denied* schools, must complete an academic progress report for the Virginia Board of Education (to be submitted to the Office of School Improvement). The submission dates are October 15, 2008; November 28, 2008; February 6, 2009; March 31, 2009; and June 30, 2009.

The Restructuring Quarterly Report for years 4, 5, and beyond of improvement, *accreditation denied*, or *conditionally accredited* schools focuses the attention of school and central office personnel as well as outside technical assistance providers on the frequent and formal analysis of data as a primary means of addressing the academic deficiencies of the school. The rationale for such a practice is found in the *LEA and School Improvement Non-Regulatory Guidance*, July 21, 2006, as it addresses the purpose of annual review of school progress. The results of the quarterly and annual review provide the state educational agency and local educational agency with detailed, useful information that can be used to develop or refine technical assistance strategies to schools.

The quarterly reports can be found on the Virginia Department of Education Web site at <http://www.doe.virginia.gov/VDOE/SchoolImprovement/>.

<b>Condition 9</b>
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**Additional Quarterly Reporting**

In addition to the areas in the quarterly report, The Petersburg Public Schools will also report, on a quarterly basis, on the TeachFirst and Voyager programs in schools receiving School Improvement funding. Teacher quality data will also be required quarterly. The Chief Academic Officer will provide a quarterly reporting form.

**Condition 10**

**Monthly or Bi-weekly Minutes Submission: Alternative Governance Meetings**

**Vernon Johns Middle, Peabody Middle, and Stuart Elementary** will report on the decisions and actions resulting from alternative governance meetings in schools receiving School Improvement funding via minutes and other relevant reports.

**Conditions of Award for Additional School  
(A.P. Hill Elementary)**

**Applicable Conditions**

**Part V. Use of Funds and Pre-Approval of Reimbursement Requests**

Follow the requirements of this section above.

**Part VI. Academic Progress Reporting for Years 4, 5, and Beyond of  
Improvement, Accreditation Denied or Conditionally Accredited Schools**

**Condition 8 and 9: Quarterly Reporting**

**A. P. Hill Elementary School**, as a school that has been rated *accreditation denied*, must complete the Restructuring Quarterly Report according to the requirements in Part V. Condition 6 and 7 above.

## Superintendent's Certification

The Superintendent of the Petersburg City Public Schools certifies that the conditions of award shall be enacted in order to effectuate the expenditure of the awarded School Improvement funds. This certification is due by September 30, 2008, to the Virginia Department of Education, Office of School Improvement, P. O. Box 2120, Richmond, Virginia 23218-2120, by September 30, 2008, to the Virginia Department of Education, Office of School Improvement, P. O. Box 2120, Richmond, Virginia 23821-2120, Attention: Brenda Spencer.

### Signature:

\_\_\_\_\_  
Division Superintendent

\_\_\_\_\_  
Date

# Board of Education Agenda Item

Item: \_\_\_\_\_ F. \_\_\_\_\_

Date: September 25, 2008

**Topic:** First Review of the 2007-2008 Annual Report on Public Charter Schools in the Commonwealth of Virginia

**Presenter:** Ms. Roberta Schlicher, Director, Office of Program Administration and Accountability

**Telephone Number:** (804) 225-2870

**E-Mail Address:** [Roberta.Schlicher@doe.virginia.gov](mailto:Roberta.Schlicher@doe.virginia.gov)

**Origin:**

Topic presented for information only (no board action required)

Board review required by  
 State or federal law or regulation  
 Board of Education regulation  
 Other: \_\_\_\_\_

Action requested at this meeting     Action requested at future meeting

**Previous Review/Action:**

No previous board review/action

Previous review/action  
date \_\_\_\_\_  
action \_\_\_\_\_

**Background Information:** Section 22.1-212.11 of the *Code of Virginia*, as amended, requires local school boards to report the number of public charter school applications that they approved and denied to the Virginia Board of Education on an annual basis. Section 22.1-212.15 requires local school boards to submit annual evaluations of any public charter school to the Virginia Board of Education. The legislation stipulates that the Board report its findings annually to the Governor and the General Assembly by October 15. The Department of Education collected information on the number of charter school applications approved and denied by local school boards through a Superintendent's Memorandum dated April 25, 2008. Additional information was collected through an annual evaluation report submitted for 2007-2008 by each of the public charter schools operating in the state.

**Summary of Major Elements:** The attached annual report contains a summary of information from the required data collections for operating public charter schools in Virginia as well as applications for public charter schools. Since the initial state legislation for charter schools was passed in 1998, ten charter schools in eight school divisions have been approved. During the 2007-2008 school year, three schools operated. One charter school that was approved by its local school board in June 2007 opened in August 2008; and one charter school that was approved by its local school board in June 2008 is

waiting for contract approval before opening in July 2009. Information collected from division superintendents revealed that no charter school applications were denied. An annual report that summarizes the results of the public charter schools is attached.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the 2008 Annual Report on Charter Schools in Virginia pursuant to §22.1-212.15, *Code of Virginia*.

**Impact on Resources:** None

**Timetable for Further Review/Action:** Following approval, the report will be forwarded to the Governor and the General Assembly as required by §22.1-212.15, *Code of Virginia*.



VIRGINIA BOARD OF EDUCATION

REPORT

**A REPORT ON  
PUBLIC CHARTER SCHOOLS IN THE  
COMMONWEALTH OF VIRGINIA  
FOR 2007-2008**

PRESENTED TO

**GOVERNOR TIMOTHY M. KAINÉ  
AND THE  
VIRGINIA GENERAL ASSEMBLY**

September 25, 2008

**PREFACE**

Section 22.1-212.11 of the *Code of Virginia*, as amended, requires local school boards to report annually to the Virginia Board of Education the status of public charter schools. Based on these compliance and performance criteria and other evaluation considerations, the objectives of the evaluation are as follows:

- Evaluate charter schools' progress in achieving the goals.
- Evaluate the performance of charter school students compared to the performance of other public school populations.
- Evaluate the impact of charter schools' activities in terms of contributions to the community and education system, in general.

The staff member assigned to the preparation of the report was Diane L. Jay, associate director, Office of Program Administration and Accountability, Division of Instruction, Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23218-2120. Questions concerning the report should be directed to Ms. Jay at (804) 225-2905 or by e-mail at [Diane.Jay@doe.virginia.com](mailto:Diane.Jay@doe.virginia.com).

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## EXECUTIVE SUMMARY

The evaluation of the public charter schools of Virginia examines the three public charter schools in operation in the state during the 2007-2008 school year. All three schools in operation in Virginia are designed to provide alternative and experiential learning opportunities for students who are at risk. However, differences among these schools include: the histories of the schools, characteristics of the communities served, characteristics of the students enrolled, size of the student bodies, grade levels served, resources available, and educational approaches and priorities. A fourth charter school, approved in 2007, used 2007-2008 as a planning year and opened for students in August 2008. The fifth charter school, approved in June 2008, is waiting for contract approval before opening in July 2009.

### Key Observations and Findings

#### National

- Legislation. Forty (40) states and the District of Columbia have charter school laws in place.
- Schools. Of the more than 130,407 public K-12 schools nationally, 4,225 are charters.
- Students. A total of 1,242,427 students are enrolled in public charter schools. The total United States public school enrollment is 49,113,000.<sup>1</sup>

#### Virginia

- Schools. Three charter schools operated in Virginia in 2007-2008. As of June 2008, the total enrollment for the three charter schools was 248 students.
- Staff. The three schools reported a total of 35.5 staff members including principals, teachers, paraprofessionals, and guidance counselors. The average student-to-teacher ratio was 10 students per teacher.
- Progress in Achieving Goals. Progress as reported in terms of improved academic achievement, average daily attendance, and decreased dropout rates varies from year to year and among the schools. All three schools, Murray High School, Hampton Harbour Academy, and York River Academy achieved Adequate Yearly Progress (AYP) performance targets under the *No Child Left Behind Act of 2001* for the 2007-2008 school year based on data from spring 2007. For 2004-2005, 2005-2006, 2006-2007, and 2007-2008, Murray High School and York River Academy were fully accredited. Hampton Harbour Academy was conditionally accredited for the 2007-2008 school year. In 2006-2007, the school status was “Accreditation Withheld/Improving School Nearing Accreditation.” For 2004-2005 and 2005-2006, the school was accredited with warning.

<sup>1</sup> “Charter Schools Fast Facts.” 2 July 2008. Center for Education Reform. Washington, D.C. 2 July 2008.

<http://www.edreform.com/index.cfm?fuseAction=section&pSectionID=15&cSectionID=97#ENROLLMENT> Path: Site Index.

- Average Daily Attendance and Dropout Rates. The overall average daily attendance rate in the charter schools has improved slightly during the last several years and is presently at 91 percent. The state rate for 2007-2008 is 95.2 percent. While dropout rates in the public charter schools have historically been higher than comparable rates for the divisions in which they are chartered, dropout rates in 2006-2007 were at zero percent in two of the schools and 1.1 percent in the third school. Official dropout rates for 2007-2008 will be available from the Virginia Department of Education after October 1, 2008.
- Comparison of Student Performance. The performance of pupils in charter schools as compared to students in other schools is reported in Adequate Yearly Progress (AYP) and Standards of Learning (SOL) assessment results. Assessment results indicate that in some cases, student performance in the charter schools exceeds that of the more traditional school; in other cases it does not. The three schools also self-reported that the students in the charter schools are generally performing better than if they had remained in a traditional school.
- Impact on the Community. All of the schools reported programs to achieve parental and community involvement. The perceptions of the schools, community awards, other forms of recognition, and parental surveys suggest success in these efforts. Survey results suggest that the small size, individualized instruction, and innovative approaches to education found in these schools have had a positive impact on the communities they serve.

### **The *Code of Virginia* and Charter Schools**

The Virginia General Assembly passed House Bill 2311, Public Charter School Fund, during the 2006-2007 session that amended the *Code of Virginia* by adding a section numbered 22.1-212.5:1, establishing a public charter school fund. The purpose of this fund is to establish a mechanism whereby gifts, grants, bequests, or donations from public or private sources can be paid into the state treasury and credited to the fund for establishing or supporting public charter schools in the Commonwealth that stimulate the development of alternative public education programs. Criteria for making distributions from the fund were approved by the Virginia Board of Education on January 10, 2008. To date, no gifts, grants, bequests, or donations have been received in the fund for disbursement.

### **Growth of Charter Schools in Virginia**

In July 2005, the United States Education Department (USED) awarded three federal charter school grants for proposed public charter schools in Albemarle County, Richmond City, and Norfolk City. The charter school applications in Albemarle and Richmond have been approved by the respective local school boards. The Norfolk charter school application has not been presented to the local school board for approval.

In Administrative Superintendent's Memorandum, Number 13, dated April 25, 2008, "Charter School Report for 2007-2008," superintendents were asked to respond to the following charter school question: "Whether you have charter schools or not in your division, please list barriers you perceive in establishing charter schools in Virginia." Forty-nine (49) percent of the divisions did not respond to the question; 21 percent listed no barriers; 18 percent cited fiscal barriers; 11 percent indicated that there was no interest or need; and nine percent cited lack of facilities. Other barriers mentioned included: difficulty obtaining certified teachers; high-quality public school programs; restrictiveness of Virginia charter school law; insufficient research; and a lack of political will for establishing charter schools. The responses cited above are similar to responses received for the 2006-2007 charter school report.

## CHAPTER ONE

### Purpose

This report provides the results of an evaluation of the public charter schools in Virginia. The evaluation examines the three public charter schools in operation during the 2007-2008 school year. All of these schools serve at-risk students.

### Objectives and Scope of Evaluation

The goals of the three charter schools included in this evaluation are similar in that they are all designed to provide alternative and experiential learning opportunities for students who are at risk. While the general goal is similar, there are also differences among these schools such as:

- histories of the schools;
- characteristics of the communities served;
- characteristics of the students enrolled;
- size of the student bodies;
- grade levels served;
- resources available; and
- educational approaches and priorities.

### Summary Report

The summary report focuses on evaluation considerations applicable for all charter schools in the Commonwealth. Section 22.1-212.11 of the *Code of Virginia*, as amended, requires local school boards to report annually to the Virginia Board of Education the status of public charter schools. Various sections of this *Code* delineate compliance and performance criteria. In that context, the objectives of this evaluation are as follows:

1. Evaluate charter schools' progress in achieving their goals;
2. Evaluate the performance of charter school students compared to the performance of other public school populations; and
3. Evaluate the impact of charter schools' activities in terms of their contributions to the community and education system, in general.

### School-Specific Attachments

Differences in the characteristics of the three schools and in the data provided by each restrict the ability to provide comparable reporting of charter school performance at the summary report level. These differences also make it difficult to capture many of the unique characteristics and accomplishments of the individual schools. An attachment is provided for each charter school that includes selected school-specific information for many of the same evaluation areas considered in the summary report.

## Sources

The information, observations, and findings in both the summary report and the attachments are primarily based on the following sources:

- Information collected by the Virginia Department of Education (VDOE) through an annual report. These reports were submitted to the VDOE in June 2008 for the 2007-2008 school year by the school divisions that had public charter schools operating during that period.
- Additional data available to the VDOE that were used to augment the school division reports.
- Information collected by the VDOE on the number of charter school applications approved and denied by local school boards through Administrative Superintendent's Memorandum, Number 13, dated April 25, 2008.
- Relevant information previously published by the VDOE.

## Structure of the Remaining Chapters of the Summary Report

The summary report provides a collective evaluation of the three public charter schools in Virginia. The following three sections of this summary report address:

- Background Information – Chapter Two relates to the *Code of Virginia* as it applies to charter schools as well as summary data related to the charter schools and student populations, waivers, staff, and initiatives to foster parental and community involvement;
- Evaluation – Chapter Three summarizes charter school student performance; and
- Overall Impact – Chapter Four examines the overall impact of charter schools in terms of:
  - effectiveness in meeting the needs of the students served;
  - progress in achieving the schools' goals;
  - benefits to the charter school students;
  - factors influencing the status of the schools; and
  - testimonials.

## CHAPTER TWO

### Background and Summary Information

This section provides general information addressed in the *Code of Virginia* as it applies to charter schools as well as general information profiling Virginia's charter schools.

#### A. The *Code of Virginia* as Applied to Charter Schools

As delineated in the *Code of Virginia*, (§ 22.1-212.5), public charter schools in Virginia are nonsectarian, nonreligious, or non home-based alternative schools located within a public school division intended to:

- stimulate the development of innovative educational programs;
- provide opportunities for innovative instruction and assessment;
- provide parents and students with more options within their school divisions;
- provide teachers with a vehicle for establishing schools with alternative innovative instruction and school scheduling, management, and structure;
- encourage the use of performance-based educational programs;
- establish and maintain high standards for both teachers and administrators; and
- develop models for replication in other public schools.

The Virginia General Assembly passed House Bill 2311, Public Charter School Fund, during the 2006-2007 session. This act amended the *Code of Virginia* by adding a section numbered 22.1-212.5:1, establishing a public charter school fund. The purpose of this fund is to establish a mechanism whereby gifts, grants, bequests, or donations from public or private sources can be paid into the state treasury and credited to the fund for establishing or supporting public charter schools in the Commonwealth that stimulate the development of alternative public education programs. Criteria for making distributions from the fund were approved by the Virginia Board of Education on January 10, 2008. To date, no gifts, grants, bequests, or donations have been received in the fund for disbursements.

#### B. Waivers

Based on information collected in the annual evaluation in June 2008, Hampton Harbour Academy requested and received approval for certain waivers for the 2007-2008 school year. The waivers were in the areas of: 1) course offering approvals in reading, writing, and mathematics; 2) electives; 3) foreign language offerings; and 4) 140 clock hours offered per year of instruction in each of the four disciplines of English, mathematics, science and history/social science.

#### C. Schools and Student Populations

Since the initial state legislation for charter schools was passed in 1998, ten charter schools in eight school divisions have been approved by local school boards. Three of the schools operated during the 2007-2008 school year. A fourth charter school, approved in 2007, has

used 2007-2008 as a planning year and opened for students in August 2008. The fifth charter school, approved in June 2008, is waiting for contract approval before opening in July 2009. The other five charter schools have closed.

A Virginia public charter school may be approved or renewed for a period not to exceed five school years; however, the school can be granted multiple renewals that permit operation for more than a total of five years. Table 1 provides summary information about the three charter schools in operation for 2007-2008.

**Table 1.**  
**Virginia Public Charter Schools in Operation -- 2007-2008**

Division	School	Year Opened	Grades Served	Enrollment (reported by the school in June 2008)
Albemarle County Public Schools	Murray High School	2001	9-12	110
Hampton City Public Schools	Hampton Harbour Academy	2001	6-8	88
York County Public Schools	York River Academy	2002	9-11	50

**D. Student Populations**

Virginia’s public charter schools serve a variety of grade levels and enroll a small number of students. The schools reported a total of 248 students enrolled as of June 2008. Virginia’s public charter school student population grew steadily from the opening of the first school in 1999 through the 2003-2004 school year. The student population declined in 2004-2005 and further declined during 2005-2006 with the decrease in the number of schools. The 2005-2006, 2006-2007, 2007-2008 charter school populations remained relatively constant as did the number of schools. Table 2 profiles the statewide public charter school population over the last eight years.

**Table 2.**  
**Trend in Student Populations in Virginia Public Charter Schools**

School Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Number of Public Charter Schools	1	1	6	8	7	5	3	3	3
Total Student Population [1]	41	40	440	685	745	555	231	237	248

Note [1]: Student population is based on charter school self-reported data.

## CHAPTER THREE

### Evaluation of Charter School Student Performance

Virginia's three public charter schools in operation in 2007-2008 focus on increasing educational opportunities and providing alternative educational programs for students who are potentially at risk of academic failure. However, their population is not a representative subset of the traditional school student population. Assessing student performance using the Standards of Learning (SOL) test scores provides some insight toward performance gains, but for the charter school population, other metrics require consideration.

Many of the students, particularly older students enrolled in the two high school programs, were in danger of dropping out of school prior to attending the charter schools. Poor attendance, past academic failure, and other risk factors create challenges for the schools in raising the academic achievement level of these students, graduating them, and preparing them to be productive members of society. Despite the challenges, progress has been demonstrated and reported in improved academic achievement, improved average daily attendance, and a decrease in dropout rates. However, the quantitative results, in the form of SOL achievement data, vary from year to year and among schools.

#### A. Student Selection Criteria

Because the three schools evaluated have different educational models and objectives, they have different student populations. However, many of the criteria used to select students are similar. These criteria include selecting students who:

- have been unsuccessful in a traditional school setting and would benefit academically from a smaller, nontraditional school environment;
- are at risk for leaving school or graduating below potential;
- are over age for the grade level for a variety of reasons (e.g., dropped out, failed grade(s), medical reasons); and/or
- have chronic problems of attendance and/or discipline.

These criteria are unique to these schools and warrant consideration when evaluating the student performance. Other selection criteria such as student career interests and student willingness to commit to school policies and objectives vary. The local selection process also differs among schools.

#### B. Comparing Charter School and Traditional School Student Performance

Since the objective of Virginia's charter schools is to provide an alternative educational approach and environment to improve educational results for students who experienced failure or poor performance in the traditional schools, the issue of comparative performance is one of determining whether each individual student would perform, or has performed, better in a traditional or charter school. The performance of pupils in charter schools as compared to students in other schools is reported in Adequate Yearly Progress (AYP) and Standards of Learning (SOL) assessment results.

### C. Student Achievement 2007-2008

Measuring student achievement for the charter school student population also presents challenges. The charter school student population is small and lacks continuity from year to year. Given the at-risk profile of these students, modest gains in testing results may reflect significant improvement and may represent only a small portion of the actual educational benefit realized.

1. **Standards of Learning and Other Quantitative Testing.** Standards of Learning (SOL) assessment results will not be available for the 2007-2008 school year until fall 2008. A history of SOL test scores is provided in the attachment for each school. In general, SOL test results reflect variability by year, grade level, and test. Additionally, they have varied from school to school, ranging from comparable or better than the scores in the school division in which the school is chartered to lower than overall school division scores. For 2004-2005, 2005-2006, 2006-2007, and 2007-2008, Murray High School and York River Academy were fully accredited.

All three operating charter schools, Murray High School, York River Academy, and Hampton Harbour Academy met their Adequate Yearly Progress (AYP) objectives for the 2007-2008 school year based on assessment data from 2006-2007. The 2007-2008 school year was the first year that Hampton Harbour Academy made its AYP objectives. Historically, Murray High School and York River Academy have produced SOL test scores that were comparable or better than the average overall scores from their divisions. Hampton Harbour Academy made significant academic progress between 2005-2006, 2006-2007, and 2007-2008. The present status of the school is “conditionally accredited.” In summary, available SOL test data suggest improved student academic performance at the schools.

2. **Qualitative Measures of Achievement.** Several schools conduct surveys that address student attitudes about the school experience, the desire to attend school, and the learning climate. These surveys also try to measure increases in the students’ personal ethics, collaboration, and cooperation. Some schools survey parents regarding the perceptions of their children’s attitudes and observable changes. Schools report that this qualitative and other anecdotal feedback suggest additional evidence of student improvement in the charter school setting.

3. **Other Measures of Achievement.** Many of the at-risk students attending charter schools have a history of difficulties in discipline, attitude, and peer relationships; poor study habits; and communications issues. These characteristics lead to, or are correlated with, low attendance levels and higher dropout rates.

**D. Average Daily Attendance (ADA) Rate**

Chronic attendance problems are one of the selection criteria for entry into the three charter schools operating in Virginia. Consequently, public charter schools in Virginia generally have student populations that have lower ADA rates than the traditional public student population.

Charter school and comparable division ADA rate data since 2001 are presented in Table 3. Average daily attendance rates for the 1999-2000 and 2000-2001 school years were reported for only one charter school and are not included. Complete ADA histories for the three evaluated schools and their divisions are provided in the school’s attachment. The overall average daily attendance rate in the charter schools improved modestly between 2001-2002 and 2006-2007. In 2007-2008, there was a small drop in ADA. The division rates have remained constant at near the average state rate of 95.2 percent for 2007-2008.

**Table 3.  
Average Daily Attendance – Charter Schools and Their Divisions**

Average Daily Attendance [1]	2001-2002 [2]	2002-2003 [3]	2003-2004 [4]	2004-2005 [5]	2005-2006 [6]	2006-2007 [6]	2007-2008 [6]
Charter Schools	86.87%	86.15%	88.71%	87.78%	90.6%	91.3%	87.5%
Divisions	95.10%	95.18%	95.19%	95.36%	95.7%	95.5%	95.2%

Note [1]: Based on data provided by the VDOE.

Note [2]: Includes six charter schools and the divisions in which they were chartered.

Note [3]: Includes eight charter schools and the divisions in which they were chartered.

Note [4]: Includes seven charter schools and the divisions in which they were chartered.

Note [5]: Includes five charter schools and the divisions in which they were chartered.

Note [6]: Includes three charter schools and the divisions in which they were chartered.

**E. Dropout Rate**

Another criterion used to select students for charter school placement is “their risk of leaving school.” The operating charter schools in Virginia generally have student populations that would predictably have higher dropout rates than the overall student population. Overall charter school and comparable division dropout rate data for the previous five years are presented in Table 4. Official dropout rates for 2007-2008 will not be available until after October 1, 2008. Dropout rates for 1999-2000 and 2000-2001 were reported for only one charter school and were not included. Complete dropout histories for the three evaluated schools and their divisions are provided in the school’s attachment.

Dropout rate data vary from school to school and over time for each charter school. As indicated by the data in Table 4, dropout rates in Virginia public charter schools have historically been higher than comparable rates for the divisions in which they are chartered. However, in 2006-2007, the charter schools’ dropout rates dropped significantly from previous years and were well below the state dropout rate of 1.87 percent.

**Table 4.**  
**Dropout Rates – Charter Schools and Their School Divisions**

Dropout Rates [1]	2001- 2002 [2]	2002- 2003 [3]	2003- 2004 [4]	2004- 2005 [5]	2005- 2006 [6]	2006- 2007 [6]	2007- 2008 [7]
Charter Schools [1]	18.0%	12.9%	6.7%	1.6%	3.6%	.6%	TBD
School Divisions [1]	2.6%	1.7%	1.5%	0.8%	1.7%	1.9%	TBD

Note [1]: Based on data provided by the VDOE.

Note [2]: Includes six charter schools and the divisions in which they were chartered.

Note [3]: Includes eight charter schools and the divisions in which they were chartered.

Note [4]: Includes seven charter schools and the divisions in which they were chartered.

Note [5]: Includes five charter schools and the divisions in which they were chartered.

Note [6]: Includes three charter schools and the divisions in which they were chartered.

Note [7]: Official dropout rates for 2007-2008 for the charter schools will not be available until fall 2008.

## CHAPTER FOUR

### Overall Assessment

The charter schools state that they have all made progress toward the goals and objectives as stated in their charters. They believe that they have contributed positively toward the educational experience and lives of their students and the communities they serve. For most of these schools, available quantitative data support these perceptions, and qualitative data reinforce them.

#### A. Effectiveness in Meeting the Needs of the Populations Served

The schools identify their effectiveness as a school by the degree in which the school meets the “special needs” of its students. In general, they believe that the student populations served require an individualized, nurturing, and safe educational environment for success in school and to increase their opportunity for success beyond school. Success cited by the schools includes return rates, graduation rates, parental support and feedback, community support, and school division support. The three schools also demonstrated academic improvement and improved performance on SOL tests as a measure of success.

#### B. Progress in Achieving Goals

The three public charter schools evaluated in this report expressed their progress differently, but stated their goals as:

- achieving state accreditation and meeting AYP targets;
- assuring graduation, completion, or promotion;
- facilitating student access to postsecondary education and training opportunities;
- helping students transition into postsecondary educational, work force, or military opportunities; and
- increasing parental and community involvement.

All of these schools report progress toward meeting some of these goals. However, goals varied from school to school and progress was mixed. For 2007-2008, all three schools achieved their AYP goals; two were fully accredited, and one was conditionally accredited.

#### C. Benefits Provided to Students

All three schools report that a primary benefit provided for the students is an educational environment in which: (1) students can be comfortable and competitive; (2) targeted post-graduation opportunities can be provided; and (3) special individual needs of these students can be met.

#### D. Factors Influencing the Status of Charter Schools in Virginia

Schools provided a variety of responses regarding the factors that have contributed to their present status. Reported perceptions included support (i.e., school system, community, and parental support), funding, facilities, student selection, emphasis on technology, small, structured environments, and excellent staff.

## E. Testimonials

Schools have provided statements from parents and students during the course of the year on the success of their charter school. Comments are provided below:

### *Parent/Guardian Statement*

“We would like to express our gratitude and extend a great thank you for all you have done. As parents of a child who attended your school, we are very concerned about her milestones in learning, as well as complications she may have through 2007-2008 school year. When we expressed our concerns you immediately helped to guide where we need to be. During the Child Study Committee meetings, we were pleased about the attention and all concerns given to our daughter’s needs. Thank you for all you have done and continue to do in order to help our child achieve her academic goals. The experience we have encountered has been pleasant, professional, and proficient to all our concerns. The school division has provided us with a reason to understand why it is the best in public education.”

### *Student Statements*

“If not for [school], I would probably be one and a half credits behind. It just wasn’t working for me. I went to normal high school for two years. I think it’s really saved me and given me a second chance.”

“If they were to decide to take away funding and send everyone back to their base school, I would be in the front of the crowd protesting. This school is going to make a lot of good people and I’m determined to be one of them.”

“A lot of the reasons why I do better is because of my relationship with the teachers. When you’re friends with a teacher and on close terms with a teacher, you want to do well. You want to show them that you’re going to work hard in their class. I don’t know if it’s true or if it’s just me, but if I’m in a class and I fail a class or if I’m incomplete, it’s almost a little bit disrespectful to the teacher that I’m not working as hard as I should. At [my old school], I really wouldn’t have cared. But here, because of the way that they treat me, the way that things are run, it makes me want to work hard. It makes me want to do well for my teachers, not only for myself.”

“My environment has changed, and due to that, I feel more positive about myself. I’m starting to finally experience success which is something that I haven’t had in a long time. I guess I’m a little more positive now, and my work ethic has definitely improved a lot...I’m trying to turn stuff in on time and really not be ashamed of what I’m turning in. Hopefully that will carry over to my real world experiences.”

“It was just too much for me [at old school] and there are times where here it’s too much. They understand here that I do have a very stressful life outside of school. Sometimes it will just come to a boiling point. Especially in the last couple of months, there have been things that have brought up family issues that have just torn me apart. And they knew it. They knew it before I knew it was coming, and they were like, ‘It’s ok to break down.’ I wouldn’t have done that in my base school. I wouldn’t have gone to a guidance counselor and said

this is what's going on. My teachers tracked me down, and said 'We know what's going on, it's ok to cry.' I was flabbergasted that someone at my school cares this much. They don't just worry about what assignment I'm turning in, they care about my well-being."

"Going to somewhere new is odd, but at this school it was smooth sailing.... You don't get jumped and all of a sudden everybody loves you. It's very easy to mesh in because it's a very open, diverse community.... It's so small, and the people here are so accepting as you are. It didn't take that long, for a few days you're like what do I do now? But then people start to reach out to you, bring you into the community, and you just get enmeshed and you're just happy."

## ATTACHMENTS

### Charter Schools Evaluation – 2007-2008

The three charter schools in Virginia included in this evaluation are different. These differences make generalizations about charter school performance and impact difficult.

The following sections provide an attachment for each individual school that is included in the summary report. Each attachment includes the following school-specific information:

- General school information;
- Student performance Standards of Learning (SOL) test results;
- Attendance data;
- Dropout data;
- Professional development information; and
- Staffing data and information.

The data shown in these attachments are a combination of school self-reported information and information derived from Virginia Department of Education data sources.

## Attachment A1

### Albemarle County Schools, Murray High School

Year opened as a charter school:	2001
Grades served in 2007-2008:	9-12
Enrollment 2006-2007:	110
School designed to serve students considered to be at risk:	Yes
Intends to operate as a charter school during the 2008-2009 school year:	Yes

**Student Achievement.** Murray High School SOL test results have generally improved over its years as a charter school as shown in the Table A1.1. The 2006-2007 SOL test results show high performance by students on all tests administered and in several subjects surpassed the division's scores. The 2007-2008 SOL results will not be available until fall 2008.

**Table A1.1.**  
**SOL Pass Rates for Murray High School**

SOL End-of-Course Test Results [1]	School Percent Passing	School Percent Passing	School Percent Passing	School Percent Passing	<i>Division Percent Passing</i>	School Percent Passing	<i>Division Percent Passing</i>	School Percent Passing	School Percent Passing
	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2005-2006	2006-2007	2006-2007	2007-2008
English Reading	71	100	96	82	89	92	93	98	[2]
English Writing	67	93	92	94	91	95	94	100	[2]
Algebra I	100	75	75	100	94	93	95	100	[2]
Algebra II	71	N/A	73	50	84	88	93	89	[2]
Geometry	90	83	90	88	89	94	91	96	[2]
World Geography	63	60	100	100	82	82	88	91	[2]
World History I	N/A	100	N/A	N/A	91	82	95	N/A	[2]
World History II	75	89	100	81	92	94	95	93	[2]
U. S. History	57	68	93	86	94	100	93	94	[2]
Earth Science	70	N/A	93	100	88	83	89	N/A	[2]
Biology	100	75	100	50	89	92	93	95	[2]

Note [1]: SOL test results for 2001-2007 were provided by VDOE in terms of percent passing.

Note [2]: SOL test results for 2007-2008 will not be available until fall 2008.

**Average Daily Attendance (ADA).** Table A1.2. provides a summary of average daily attendance rates for Murray High School and the school division in which it is chartered. Average daily attendance has remained relatively constant since becoming a charter school in 2001 and approaches overall attendance rates for the division.

**Table A1.2.**  
**Average Daily Attendance for Murray High School**

Average Daily Attendance	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Murray High School	90.5%	93.3%	94.4%	91.6%	93.4%	94.5%	92.5%
Albemarle County Public Schools	95.9%	95.8%	96.0%	96.1%	96.0%	96.1%	95.9%

**Dropout Rates.** The following table summarizes dropout rates for Murray High School and the school division in which it is chartered. Dropout rates have been low and have historically been comparable to the division results. For the first time in 2006-2007, dropout rates for Murray High School were below the county dropout rate. The 2007-2008 rate results will not be available until fall 2008.

**Table A1.3.**  
**Dropout Rates for Murray High School**

Dropout Rates [1]	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Murray High School	0%	1.9%	2.3%	2.2%	1.9%	1.1%	[2]
Albemarle County Public Schools	0.8%	0.6%	1.4%	1.4%	1.6%	1.5%	[2]

Note [1]: Dropout results for 2001-2007 were provided by VDOE.

Note [2]: Dropout results for the 2007-2008 school year will not be available until after October 1, 2008.

**Professional Development.** In response to survey questions concerning professional development offered at school, the school's responses were:

Professional development customized for charter school personnel only:	No
Professional development hours provided:	Over 100
Number of professional development activities provided:	11 or more
Amount of communication with other charter schools within Virginia:	Very little
Amount of communication with other charter schools outside Virginia:	Very little
Opportunity to attend national meeting(s) regarding charter schools:	No

Staff. The 2007-2008 staffing data indicate one Murray High School teacher per ten students enrolled. The school reported that all teachers were licensed and endorsed. Staffing data for Murray High School are summarized in Table A1.4.

**Table A1.4.**  
**Staffing for Murray High School for 2007-2008**

Category	Total Number of Staff (FTE)	Positions Filled by Licensed and Endorsed Individuals (FTE)	Percent Filled by Licensed and Endorsed Individuals
Principal/Director	1.0	1.0	100
Teachers	10.83	10.83	100
Paraprofessionals	0.66	N/A	N/A
Guidance Counselors	1.0	1.0	100

## Attachment A2

### Hampton City Schools, Hampton Harbour Academy

Year opened as a charter school:	2001
Grades served in 2007-2008:	6-8
Enrollment 2007-2008:	88
School designed to serve students considered to be at risk:	Yes
Intends to operate as a charter school during the 2008-2009 school year:	Yes*

**Student Achievement.** Hampton Harbour Academy student Standards of Learning (SOL) test scores reflect substantial variability by year, grade level, and test. The school's results improved markedly in English and mathematics in 2005-2006 but dropped in 2006-2007. The science SOL test scores continue to be lower than the division's results. The 2007-2008 SOL results will not be available until fall 2008.

**Table A2.1.**  
**SOL Pass Rates for Hampton Harbour Academy**

SOL End-of-Course Test Results [1]	School Percent Passing	School Percent Passing	School Percent Passing	School Percent Passing	Division Percent Passing	School Percent Passing	Division Percent Passing	School Percent Passing	School Percent Passing
	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2005-2006	2006-2007	2006-2007	2007-2008
<b>Grade 8</b>									
English: Writing	23	23	48	27	91	90	82	65	[2]
English: Reading	28	26	32	49	76	73	80	59	[2]
Mathematics	8	16	45	35	74	75	67	54	[2]
History/Social Science	22	38	76	N/A	67	N/A	N/A	N/A	[3]
Civics [3]	N/A	N/A	N/A	68	86	N/A	N/A	N/A	[2]
U.S. History 1	N/A	N/A	N/A	51	49	N/A	56	N/A	[2]
Science	41	44	77	59	82	46	85	39	[2]

Note [1]: SOL test results for 2001-2007 were provided by VDOE in terms of percent passing.

Note [2]: SOL test results for 2007-2008 will not be available until fall 2008.

Note [3]: SOL test results for History/Social Science were broken into two end-of-course tests in 2004-2005: Civics and U.S. History.

**Average Daily Attendance (ADA).** Table A2.2. provides a summary of average daily attendance rates for Hampton Harbour Academy and the division in which it is chartered. The school's ADA has remained constant for the past few years. The ADA remains below overall attendance rates for the school division.

\*Hampton Harbour Academy will continue to operate as a charter school in 2008-2009; however, they will evaluate progress toward accreditation prior to renewing the charter in the upcoming year. The division considers on an annual basis reassigning the school to "program" status after evaluation of the school's progress toward meeting full accreditation and adequate yearly progress.

**Table A2.2.**  
**Average Daily Attendance for Hampton Harbour Academy**

Average Daily Attendance	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Hampton Harbour Academy	85.2%	83.1%	85.0%	82.1%	84.1%	85.2%	84.1%
Hampton City Public Schools	94.8%	94.5%	94.8%	95.2%	95.0%	94.9%	94.8%

**Dropout Rates.** The following table summarizes dropout rates for Hampton Harbour Academy and the school division in which it is chartered. When the school served secondary students from 2001-2004, the dropout rate was higher than the division dropout rate. Beginning in 2004, the school served middle schools students. No dropouts were reported for the 2004-2005 school year. For the 2005-2006 school year, the dropout rate exceeded that of the division. No dropouts were reported for the 2006-2007 school year. The 2007-2008 dropout rate results will not be officially available until fall 2008.

**Table A2.3.**  
**Dropout Rates for Hampton Harbour Academy**

Dropout Rates [1]	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Hampton Harbour Academy	34.3%	9.2%	9.7%	0.00%	10.0%	0.0%	[2]
Hampton City Public Schools	2.7%	2.1%	2.2%	0.5%	2.5%	3.0%	[2]

Note [1]: Dropout results for 2001-2007 were provided by VDOE.

Note [2]: Dropout results for the 2007-2008 school year will not be available until fall 2008.

**Professional Development.** In response to survey questions concerning professional development offered at school, the school's responses were:

Professional development customized for charter school personnel only:	Yes
Professional development hours provided:	20
Number of professional development activities provided:	11 or more
Amount of communication with other charter schools within Virginia:	Very little
Amount of communication with other charter schools outside Virginia:	Very little
Opportunity to attend national meeting(s) regarding charter schools:	No

**Staff.** For the 2007-2008 school year, Hampton Harbour Academy reports one teacher per ten students enrolled. The school reported that in the 2002-2003 school year, 57 percent of the staff members were licensed or endorsed in their content areas. For the 2007-2008 school year, 100 percent of the staff members were licensed or highly qualified. Staffing data for Hampton Harbour Academy are summarized in Table A2.4.

**Table A2.4.**  
**Staffing for Hampton Harbour Academy for 2007-2008**

Category	Total Number of Staff (FTE)	Positions Filled by Licensed and Endorsed Individuals (FTE)	Percent Filled by Licensed and Endorsed Individuals
Principal/Director	1.0	1.0	100
Teachers	10.0	10.0	100
Paraprofessionals	3.0	N/A	N/A
Guidance Counselors	1.0	1.0	100

### Attachment A3

#### York County Schools, York River Academy

Year opened as a charter school: 2002  
 Grades served in 2007-2008: 9-11  
 Enrollment 2007-2008: 50  
 School designed to serve students considered to be at risk: Yes  
 Intends to operate as a charter school during the 2008-2009 school year: Yes

**Student Achievement.** As depicted in Table A3.1., the York River Academy Standards of Learning (SOL) test results for 2007-2008 reflect high passing scores in those End-of-Course subjects taken by students. The 2007-2008 SOL results will not be available until fall 2008.

**Table A3.1.**  
**SOL Pass Rates for York River Academy**

SOL End-of-Course Test Results [1]	School Percent Passing	School Percent Passing	School Percent Passing	<i>Division Percent Passing</i>	School Percent Passing	<i>Division Percent Passing</i>	School Percent Passing	School Percent Passing
	2002-2003	2003-2004	2004-2005	2005-2006	2005-2006	2006-2007	2006-2007	2007-2008
English: Reading	100	N/A	N/A	N/A	N/A	96	N/A	[2]
English: Writing	0	N/A	N/A	N/A	N/A	97	N/A	[2]
Algebra I	40	89	81	92	81	94	87	[2]
Algebra II	N/A	N/A	N/A	89	50	93	N/A	[2]
Geometry	N/A	N/A	33	95	100	94	N/A	[2]
World Geography	90	85	64	80	71	93	N/A	[2]
World History I	N/A	100	81	89	86	90	97	[2]
World History II	N/A	N/A	100	93	N/A	93	N/A	[2]
U. S. History	N/A	N/A	40	94	N/A	94	N/A	[2]
Earth Science	100	71	64	87	90	83	96	[2]
Biology	N/A	N/A	N/A	93	N/A	95	N/A	[2]
Chemistry	N/A	N/A	N/A	93	N/A	93	N/A	[2]

Note [1]: SOL test results for 2002-2007 were provided by VDOE in terms of percent passing.  
 Note [2]: SOL test results for 2007-2008 will not be available until fall 2008.

**Average Daily Attendance (ADA).** Table A3.2. provides a summary of average daily attendance rates for York River Academy and the school division in which it is chartered. Average daily attendance rates for the school have been comparable to the school division ADA rates.

**Table A3.2.**  
**Average Daily Attendance for York River Academy**

Average Daily Attendance	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
York River Academy	98.8%	95.1%	95.2%	96.7%	95.6%	96.5%
York County Public Schools	96.7%	96.3%	96.3%	96.6%	96.0%	96.3%

**Dropout Rates.** The following table summarizes dropout rates for York River Academy and the school division in which it is chartered. Historically, from 2002-2005, dropout rates for the school have been higher than division rates but comparable to state results. For 2005-2006 and 2006-2007, there were no dropouts at the school. The 2007-2008 dropout rate results will not be officially available until fall 2008.

**Table A3.3.**  
**Dropout Rates for York River Academy**

Dropout Rates [1]	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
York River Academy	0%	2.1%	2.6%	0%	0%	[2]
York County Public Schools	0.9%	0.2%	0.5%	.4%	.38%	[2]

Note [1]: Dropout results for 2002-2007 were provided by VDOE.

Note [2]: Dropout results for the 2007-2008 school year will not be available until fall 2008.

**Professional Development.** In response to survey questions concerning professional development offered at school, the school’s responses were:

- Professional development customized for charter school personnel only: Yes
- Professional development hours provided: Over 60
- Types of professional development activities provided: 11 or more
- Amount of communication with other charter schools within Virginia: Very little
- Amount of communication with other charter schools outside Virginia: Very little
- Opportunity to attend national meeting(s) regarding charter schools: No

**Staff.** For the 2007-2008 school year, York River Academy reports the teacher-student ratio was no higher than one teacher per 12 students enrolled. The school reported that all teachers were licensed and endorsed. Staffing data for the school are summarized in Table A3.4.

**Table A3.4.**  
**Staffing for York River Academy for 2007-2008**

Category	Total Number of Staff (FTE)	Positions Filled by Licensed and Endorsed Individuals (FTE)	Percent filled by Licensed and Endorsed Individuals
Principal/Director	1.0	1.0	100
Teachers	5.0	5.0	100
Paraprofessionals	0.0	N/A	N/A
Guidance Counselors	1.0	1.0	100

# Board of Education Agenda Item

Item: G.

Date: September 25, 2008

Topic: First Review of Plan for Increasing Number of Students Obtaining Industry Certification and Licensures

Presenter: Lan Neugent, Assistant Superintendent for Technology and Career Education

Telephone Number: 225-2757

E-Mail Address: Lan.Neugent@doe.virginia.gov

## Origin:

Topic presented for information only (no board action required)

Board review required by  
 State or federal law or regulation  
 Board of Education regulation  
 Other: \_\_\_\_\_

Action requested at this meeting  Action requested at future meeting: \_\_\_\_\_ (date)

## Previous Review/Action:

No previous board review/action

Previous review/action  
date \_\_\_\_\_  
action \_\_\_\_\_

## Background Information:

Senate Bill 326 requires the Board of Education to develop a plan for increasing the number of students receiving industry certification and state licensure as part of their career and technical education. The Virginia Department of Education needs to provide the plan to the bill patron and to the Manufacturing Development Commission.

## Summary of Major Elements:

The proposed plan meets the requirement of Senate Bill 326 by:

- including rigorous academic preparation and career and technical assessment in the standard technical and advanced technical diplomas in the proposed Standards of Accreditation (SOA);
- collaborating with middle/secondary education and providing for industry certification and licensure in an academic and career plan for all students as requested by Governor Kaine and included in the proposed SOA;
- providing for industry certification and licensure in the newly implemented Governor's Career and Technical Academies that are designed to expand options for the general student population to acquire science, technology, engineering and mathematics (STEM) literacy as well as other critical skills and knowledge;

- continuing to offer training and certification for teachers through academies and virtual online courses that will allow schools to offer industry certification and licensure to students; and
- utilizing industry certification and state licensure as part of the requirement to meet Perkins Performance Standard 25 – Technical Skills Attainment. This performance standard now requires a third-party assessment in combination with validated classroom assessment for all career and technical education completers. (Perkins Performance Standard was approved by the U.S. Department of Education via Grant Award letter dated July 1, 2008.)

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve this plan.

**Impact on Resources:**

School divisions will have three resources to assist in paying for the industry certifications and licensure for students: state allocation for industry credentials, local Perkins allocations, and state Perkins funds. The Department pays for all expenses, including substitute teachers, when teachers attend training and testing industry certification academies, for testing after virtual online courses, and reimburses local divisions via Perkins local allocations for any industry training and certification which the Department does not offer.

**Timetable for Further Review/Action:**

## **Plan for Increasing Number of Students Obtaining Industry Certification and Licensures**

Career and Technical Education (CTE) in Virginia is a national leader in the use of industry certification and licensure as credentials for CTE students at the secondary level. Because of our success in the use of industry credentialing, Virginia is one of only a few states that has been approved to use credentialing as a component to meet the federally-mandated technical assessment of students.

Since the Office of Career and Technical Education began collecting data on industry credentials in 2004 – 2005, we have steadily increased the number of credentials obtained by students (Table 1: State Report Card, Appendix A) and have surpassed the projected number of industry certifications for Virginia Performs (Table 2: Virginia Performs – Industry Certifications, Appendix A). Beginning in 2008 - 2009, individual school division industry certification attainments will be placed into a chart for an overall review of the state reports by industry credential type (i.e., industry certification, state licensure, and NOCTI tests).

Industry credentials earned by students are reported on Virginia's School Report Card that provides information on student achievement, accreditation, safety, and attendance for the state as a whole and for individual schools. In addition, Virginia's schools and school divisions may earn points in the *Virginia Index of Performance* program for continually increasing the number of industry certifications and licensures earned annually or relative to enrollment. The *Virginia Index of Performance (VIP)* is intended to measure the extent to which students are progressing towards advanced proficiency levels in reading, mathematics, science, and history and social science and on other indicators of school and student performance. It is an incentive program to encourage and recognize school accountability performance and competence to excellence.

Industry certification and licensure is highly visible within the proposed Virginia Standards of Accreditation. First, the Technical Diploma and Advanced Technical Diploma are designed to increase rigor in academic preparation as well as provide for Career and Technical Education assessments in the graduation requirements. Second, Governor Kaine requested and the State Board of Education has included in the proposed Standards of Accreditation the use of an Academic and Career Plan. Public hearings for the proposed new Standards of Accreditation are scheduled for October 2008. The Academic and Career Plan proposes the same components as the Career Pathway Plans of Study that have already been developed through the Office of Career and Technical Education at the Virginia Department of Education in cooperation with the Virginia Community College System. Merger of the Academic and Career Plan and the Career Pathway Plans of Study will simplify implementation of the two requirements for school divisions. Local school divisions are required to develop Plans of Study for each Career Pathway that is offered through their Career and Technical Education programs. Components included in these plans of study are career assessment, academic preparation, electives, career and technical sequential offerings, industry certification and

licensure, work-based learning opportunities, sample careers, and articulation among middle, secondary, postsecondary, and four-year education levels of instruction. (Appendix B.)

Another highlight for Career and Technical Education in Virginia are the Governor's Career and Technical Academies. These academies are programs designed to expand options for the general student population to acquire science, technology, engineering, and mathematics (STEM) literacy and other critical skills, knowledge, and credentials that will prepare them for high-demand, high-wage and high-skill careers in Virginia. Achievement benchmarks for the academies will include industry certification and licensure. There are seven academies this first year of implementation. (Appendix C.)

The Carl D. Perkins Career and Technical Education Act of 2006 (the Act of 2006) includes eight performance standards that state career and technical education programs are required to meet. One of the performance standards requires states to measure technical skills attainment of career and technical education graduates. The U.S. Department of Education, Office of Vocational and Adult Education, has approved Virginia's plan to continue utilizing the student competency records that are documented at the local level in combination with students obtaining an industry certification, licensure, or passing National Occupational Assessment Test Institute tests (NOCTI) which have been approved by the Virginia Board of Education for verified credit. (Appendix D.)

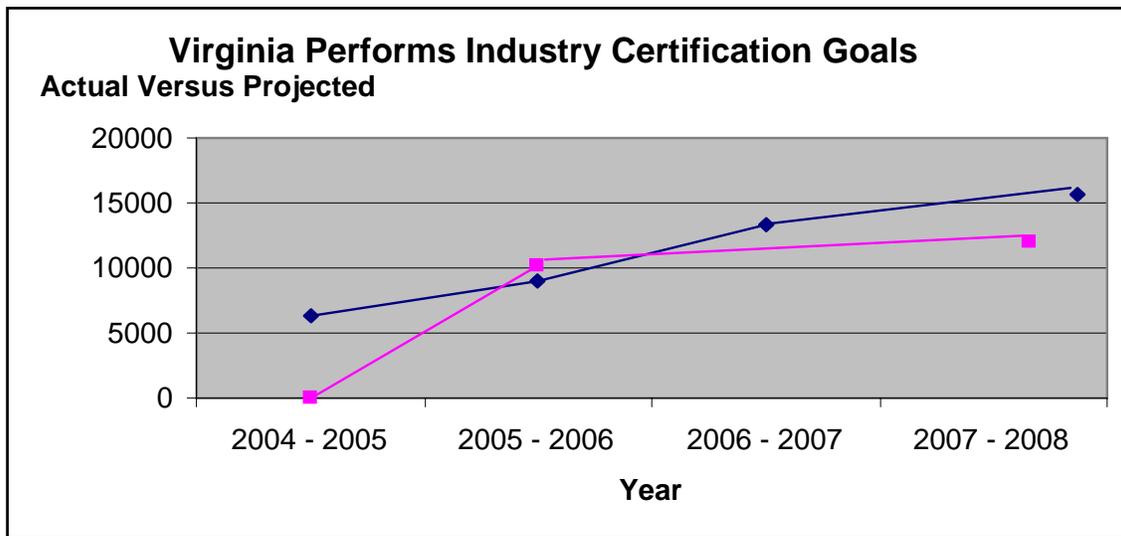
The plan for implementing this process is for local school divisions to test all career and technical education completers (students who complete a CTE program and graduate) by the year 2010 – 2011. The divisions will be adding one-third of their completers each year so the goal of 100 percent can be met by the 2010 – 2011 school year. Currently state dollars have been allocated through the 2009 – 2010 school year and Perkins allocations to local school divisions may also be utilized for this purpose. This supports Governor Kaine's goal for Virginia to elevate the levels of education preparedness and attainment for its citizens and the Virginia Index Performance program to measure this attainment. Technical assistance with this initiative will be provided through the Office of Career and Technical Education staff. The technical assistance will include workshops, on-site visits, and electronic communications.

The Virginia Department of Education, Office of Career and Technical Education (VDOE/CTE) continues to provide teacher training and industry certification through academies and/or virtual online training. If the VDOE/CTE does not provide an academy or virtual online training then local school divisions may utilize their Perkins dollars to support training and testing for the teachers. For those programs where a state licensure is appropriate for the student, current state teacher licensure regulations require the teacher to have this when employed. (Appendix E.)

## APPENDIX A

<b>Table 1: State Report Card</b>				
	<b>State Licensure</b>	<b>Industry Certification</b>	<b>National Occupational Competency Testing Institute (NOCTI) Assessments</b>	<b>TOTAL</b>
<b>2004 – 2005</b>	1,100	4,678	559	6,337
<b>2005 – 2006</b>	1,172	7,935	1,008	9,060
<b>2006 – 2007</b>	1,039	10,369	1,917	13,325
<b>2007 – 2008</b>	918	11,920	2,592	15,430

**Table 2: Virginia Performs**



**SERIES 1:** Projected Industry Certifications from Virginia Performs (16,000 projected for 2012).

**SERIES 2:** Actual Industry Certifications Earned



# Commonwealth of Virginia Plan of Study

Student Name: \_\_\_\_\_ (For Local Use Only)  
 School: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Cluster: Information Technology    Pathway: Interactive Media**

*This Career Pathway Plan of Study (based on the Interactive Media Pathway of the Information Technology Career Cluster) can serve as a guide, along with other career planning materials, as learners continue on a career path. Courses listed within this plan are only recommended coursework and should be individualized to meet each learner's educational and career goals. \*This Plan of Study, used for learners at an educational institution, should be customized with course titles and appropriate high school graduation requirements as well as college entrance requirements.*

EDUCATION LEVELS	GRADE	English/ Language Arts	Mathematics	Science	Social Studies/ Science	Other Required Courses Recommended Electives Learner Activities	Recommended Career and Technical Courses Source: Administrative Planning Guide www.doe.virginia.gov/VDOE/ Instruction/CTE/apg/	SAMPLE – Occupations Relating to This Pathway: www.doe.virginia.gov/VDOE/ Instruction/CTE/careerclusters/ www.careerclusters.org www.cteresource.org/cpg/	
<b>Graduation Requirements:</b> <a href="http://www.doe.virginia.gov/2plus4in2004/index.shtml">http://www.doe.virginia.gov/2plus4in2004/index.shtml</a>									
<b>MIDDLE</b>	7						NOTE: Use state course titles Keyboarding	<ul style="list-style-type: none"> <li>- Animator</li> <li>- Digital Media Designer</li> <li>- Graphic Designer</li> <li>- Instructional Technologist</li> <li>- Media Specialist</li> <li>- Multimedia Author</li> <li>- Multimedia Developer</li> <li>- Multimedia Specialist</li> <li>- Producer</li> <li>- Production Assistant</li> <li>- Streaming Media Specialist</li> <li>- Virtual Reality Specialist</li> <li>- Web Administrator</li> <li>- Web Architect/Designer</li> <li>- Web Designer</li> <li>- Web Developer</li> <li>- Web Producer</li> <li>- Webmaster</li> </ul>	
	8						Digital Input Technologies Computer Applications		
<b>Career Assessment:</b> Administration of a career assessment instrument is appropriate at the middle school level to help students and their parents plan for high school (Virginia's Career Planning System or other assessment product).									
<b>SECONDARY</b>	9	English	Algebra I	Earth Sciences	World History/ Geography	Health & PE (2 years) Foreign Language (3 years) Other Electives to Complement Pathway (Core Academic and CTE):	IT Fundamentals		
	10	English	Geometry	Biology	World History/ Geography		Computer Information Systems		
	11	English	Algebra II	Chemistry	US/VA History		Design Multi-Media & Web Technologies		
	12	English	Trigonometry/ Advanced Algebra	Physics (or Principles of Technology I and II)	US/VA Government		Advanced Design Multi- Media & Web Technologies		
<b>High school courses in the pathway offered locally for college credit should be coded: DE (Dual Enrollment) and/or VC (Validated Credit)</b>									
<b>List related certifications/credentials approved by VDOE and offered locally:</b> <a href="http://www.doe.virginia.gov/VDOE/Instruction/CTE/apg/">http://www.doe.virginia.gov/VDOE/Instruction/CTE/apg/</a> (Go to Section 9.) Adobe Certified Expert (ACE) Certified Internet Webmaster Associate Brainbench Web Design and Development Certifications Macromedia Certified Professional Web Design Examination (Cisco Systems)						<b>Additional Learning Opportunities:</b> CTSO Organization(s): <input type="checkbox"/> DECA <input checked="" type="checkbox"/> FBLA <input type="checkbox"/> FCCLA <input type="checkbox"/> FFA <input type="checkbox"/> FEA <input type="checkbox"/> HOSA <input type="checkbox"/> SkillsUSA <input type="checkbox"/> TSA			
						<b>Work-Based Learning:</b> <input type="checkbox"/> Career Research <input checked="" type="checkbox"/> Cooperative Education <input type="checkbox"/> Internship <input checked="" type="checkbox"/> Mentorship <input type="checkbox"/> Job Shadowing <input type="checkbox"/> Service Learning Project <input type="checkbox"/> Student Apprenticeship			
<b>Postsecondary:</b> Placement Assessments such as COMPASS & SAT II						College Entrance Exams such as ACT & SAT			

<b>POSTSECONDARY</b>	<b>SAMPLE POSTSECONDARY PROGRAMS RELATED TO THIS CAREER PATHWAY</b> Individual plans must include locally agreed upon courses at the postsecondary level (See page 2)			
	<b>Pathway</b>	<b>Associate Degree, College Certificate, or Apprenticeship</b>	<b>Bachelors Degree</b>	<b>Postgraduate Degree</b>
	Interactive Media	Information Systems Technology AAS (NRCC)	Information Science & Systems BS (Radford University)	

College: \_\_\_\_\_

School Division(s): \_\_\_\_\_

**Postsecondary: Placement Assessments such as COMPASS & SAT II**

<b>POSTSECONDARY - COMMUNITY COLLEGE or APPRENTICESHIP - Determined Locally</b>	Semester	English	Mathematics	Science	Social Studies	Required Courses or Recommended Electives			
	<b>POSTSECONDARY PLAN OF STUDIES MUST INCLUDE POSTSECONDARY ACADEMIC, CTE, AND OTHER ELECTIVE COURSES APPROPRIATE FOR AN ASSOCIATE DEGREE.</b>								
	Year 1 1 <sup>st</sup> Semester								
	Year 1 2 <sup>nd</sup> Semester								
	Year 2 1 <sup>st</sup> Semester								
	Year 2 2 <sup>nd</sup> Semester								

College courses offered locally in the high school for college credit should be coded: DE (Dual Enrollment) and/or VC (Validated Credit)

Related Industry Certifications Available:

Additional Suggested Learning Opportunities:  
**Work-Based Learning:**  
 Cooperative Education     Internship     Mentorship  
 Job Shadowing     Service Learning Project     Registered Apprenticeship

<b>UNIVERSITY</b>	University/College: Degree or Major: Number of Articulated CC Credits:
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Notes:

## APPENDIX C

### GOVERNOR'S CAREER AND TECHNICAL ACADEMIES

#### Governor's Career and Technical Academy for Renewable Resources and Agricultural Sciences Executive Summary

<b>Partnership Members:</b>	Halifax County Public Schools; Southern Virginia Higher Education Center; Virginia Polytechnic Institute and State University; WoodLINKS, Inc.; Morgan Lumber; Ontario Hardwood; J.M. Huber Corporation; Virginia Cooperative Extension; Danville Community College; Southside Virginia Community College; Halifax County Board of Supervisors; H&M Logging; Virginia Department of Forestry
<b>Lead Entity:</b>	Halifax County Public Schools
<b>Fiscal Agent</b>	Halifax County Public Schools
<b>Contact Person:</b>	Dr. Melanie A. Stanley, Director of Academies, Halifax County Public Schools (434) 476-3107 <a href="mailto:mstanley@halifax.k12.va.us">mstanley@halifax.k12.va.us</a>
<b>Academy Location:</b>	STEM Academy 315 South Main Street Halifax, VA 24558
<b>Number of Students Served:</b>	150 middle school students; 360 high school students; 60 students in summer programs. Also, 2,586 K-5 students will have the opportunity to tour the laboratory facilities and receive introductory materials related to the program.
<b>Pathways:</b>	Natural Resource Systems Biological Engineering and Technology
<b>Academy Goals and Description:</b>	Halifax County Public Schools (HCPS) is located in rural Southside Virginia in the heart of the wood and agricultural industries. Since this area is rich in forests, land, and timber resources, the Academy will provide students with opportunities to gain knowledge and hands-on experience in careers related to the wood and agricultural industries. This Governor's Career and Technical Academy proposes to meet state and regional strategic growth needs through the Engineering and Technology and the Natural Resource Systems career pathways. The major focus of the Academy is to address the management of forest lands, and the management and leadership of forest industry businesses by inspiring students with the qualities of creativity, innovation, and entrepreneurship. The programs and courses offered through the Governor's Career and Technical Academy for Renewable Resources and Agricultural Sciences will range from biological applications in agriculture, biotechnology, and forestry to the production of manufactured goods made from wood. The foundation of the Academy will be the establishment of strong partnerships, including WoodLINKS, Inc., to provide students with opportunities

for work-based learning experiences.

The focus of the Governor's Career and Technical Academy for Renewable Resources and Agricultural Sciences is to provide students with opportunities to gain the skills, knowledge, and aspirations to be successful in the agricultural and wood industries. Specifically, the goals of the Academy are to: 1) maximize opportunities to prepare students for targeted careers in the agricultural and wood industries; 2) raise student aspirations and attract more students to postsecondary education in the areas of agriculture and wood sciences; and 3) provide well-trained, highly skilled workers to meet the work force needs of existing businesses.

**Highlights of the Academy:**

- The program will have postsecondary components for students to receive occupational certifications and continue their education through a four-year degree program at Virginia Polytechnic Institute and State University.
- Three learning laboratories will support the educational structure of the Academy: 1) the Forest-Land Laboratory will be established at the Moorefield Estate; 2) the WoodLINKS, Inc. Training Laboratory will be developed at the Southern Virginia Higher Education Center; and 3) the Agricultural Biological Applications and Biotechnology Laboratory will be established at the STEM Academy facility.
- At the elementary level, students will use the laboratories as part of their science coursework and learning experiences.
- At the middle school level, the program will provide students with the foundational knowledge of agricultural science. Two agri-science courses will be offered through the career and technical program for students to gain the knowledge and basic skills related to renewable resources. Middle school students will use the three laboratories to conduct research and investigate the biological applications in agriculture.
- At the high school level, the basis of the program is the WoodLINKS, Inc., curriculum framework. This is an industry and education partnership that provides a national curriculum framework for wood sciences. The goals and objectives of this curriculum framework will be integrated into the courses offered.
- The dual enrollment courses will prepare students for employment in the wood industry, and/or create a seamless pathway to a four-year bachelor program in Wood Science or Forestry at Virginia Polytechnic Institute and State University.
- During the summers, students at all grade levels will have the opportunity to participate in summer programs that focus on agriculture and wood sciences.

## **Governor's Academy for Innovation, Technology and Engineering Executive Summary**

**Partnership Members:** New Horizons Regional Education Centers (NHREC); Greater Peninsula Public School Divisions: Gloucester County; Hampton City; Newport News City; Poquoson City; Williamsburg-James City County; York County; Thomas Nelson Community College (TNCC); Old Dominion University (ODU); Virginia Space Grant Consortium; Northrop Grumman Corporation; The Apprenticeship School of Northrop Grumman; Cooperating Hampton Roads Organization for Minorities in Engineering (CHROME); Peninsula Council for Workforce Development; Peninsula Workforce Investment Board; and Peninsula Technical Preparation

**Lead Entity:** New Horizons Regional Education Centers (NHREC)

**Fiscal Agent:** Hampton City Public Schools

**Contact Person:** Mr. J. Joseph Johnson, Executive Director  
New Horizons Regional Education Centers  
757-766-0000  
jjohnson@nhrec.org

**Academy Location:** STEM Academy  
520 Butler Farm Road  
Hampton, VA 23666

**Number Students Served:** Seventh and eighth grades: 75-100 students; ninth and tenth grades: 150 students; eleventh and twelfth grades: approximately 180 students

**Pathways:** Electrical Engineering Technology  
Mechanical Engineering Technology

**Academy Goals and Description:** The Governor's Academy for Innovation, Technology and Engineering (GAITE) will foster a vibrant economy for the Virginia Peninsula and the Commonwealth by creating a culture that educates and trains innovators and technologists necessary for businesses to remain competitive in a global economy. GAITE will direct its initial focus on the Science, Technology, Engineering, and Mathematics (STEM) career cluster with the development of career pathways in engineering technologies, particularly electrical engineering technology and mechanical engineering technology. For these two career pathways, GAITE will establish regional enrichment programs to include *Engineering Technology Exploratory Saturdays* (seventh and eighth grades) and an *Engineering Technology Summer Camp* (ninth and tenth grades). GAITE will also establish an *Academy for Engineering Technology* (eleventh and twelfth grades) within at least one high school in each of the six school divisions in the Greater Peninsula area.

Under the facilitation of NHREC, the *Academy for Engineering Technology* will implement a unique Academy model that focuses on school division-based courses while utilizing regional courses at NHREC and the community colleges, as well as distance learning. GAITE's engineering technology curriculum will provide a seamless

alignment from middle school to high school to college, emphasizing advanced academics (Algebra I in 8th grade, Algebra II by 11th grade, and four years of science) and college-level technical training. The instructional pedagogy will implement project-based, experiential and cooperative learning. GAITE implementation will be supported by regional and school team-based professional development.

Upon successful implementation of this initial effort, GAITE will be expanded to develop enrichment programs and Academy designs for other career clusters and pathways such as geospatial technologies, modeling and simulation, nanotechnology, biotechnology, and other fields of innovation, technology and engineering based upon the work force needs of the Greater Virginia Peninsula.

NHREC is the largest and oldest regional center in the state and will become the only one to operate both a Governor's School (The Governor's School for Science and Technology) and a Governor's Academy for Career and Technical Education (GAITE).

**Highlights of the Academy:**

- A regional partnership facilitated by a Regional Education Center to establish regional and divisional programs focused initially on Electrical Engineering Technology and Mechanical Engineering Technology.
- The Virginia Space Grant Consortium will design and facilitate enrichment programs to include *Engineering Technology Exploratory Saturdays* and *Engineering Technology Summer Camp*.
- *The Academy for Engineering Technology* curriculum (eleventh and twelfth grades) will be aligned with Thomas Nelson Community College's and Old Dominion University's Engineering Technology degree programs.
- *The Academy for Engineering Technology* will be based in the school divisions, and courses will be offered at divisional high schools, NHREC, TNCC, and/or through distance learning.
- Students will earn college credits and industry credentialing as well as participate in a senior-year internship, mentorship, or project learning experience.

## **Governor's Career and Technical Academy in Arlington Executive Summary**

<b>Partnership Members:</b>	Northern Virginia Community College and Arlington County Public Schools are co-lead partners for the Governor's Career and Technical Academy in Arlington. Partners include The American Service Center; Arlington Employment Center; Passport Nissan; Nortel Telecommunications; The American Youth Policy Forum; Viral Media Productions; and Virginia Polytechnic Institute and State University. Other supporters include The American Association of Community Colleges; Arlington Economic Development; DeVry University; Farrish of Fairfax; National Science Foundation; Nortel Telecommunications; Passport Chrysler; and Passport Infiniti
<b>Lead Entity:</b>	Northern Virginia Community College
<b>Fiscal Agent:</b>	Northern Virginia Community College
<b>Contact Person:</b>	Mr. Milan Hayward, Special Assistant for Career and Technical Education Northern Virginia Community College 4001 Wakefield Chapel Road Annandale, VA 22003 (703) 323-2263 <a href="mailto:mhayward@nvcc.edu">mhayward@nvcc.edu</a>
<b>Academy Location:</b>	The Arlington Career Center 816 South Walter Reed Drive Arlington, VA 22204
<b>Number of Students Served:</b>	At least 50 students will be served during the 2008-2009 academic year, while up to 600 will be served at full implementation in the 2012-2013 academic year.
<b>Pathways:</b>	Engineering and Technology Audio and Video Technology and Film (Health Sciences) Support Services Information and Support Services Facility and Mobile Equipment Maintenance
<b>Academy Goals and Description:</b>	The Governor's Career and Technical Academy in Arlington promises a unique, jointly administered Career and Technical Education (CTE) Center, offering area CTE students the option of a five-year high school diploma/two-year college degree program. The Academy will be located within the Arlington Career Center and will open its doors in the fall of 2008 as a part-day program. Students will participate in featured dual enrollment CTE courses and supporting workplace activities, along with continued study at their respective home schools. Over the next several years, an increasing number of CTE and academic subjects will be offered until the

Academy also offers full-day programs as a comprehensive school.

The Academy's science, technology, engineering and mathematics (STEM)-infused curriculum will initially feature programs within five pathways: Audio and Video Technology and Film; Engineering and Technology; Facility and Mobile Equipment Maintenance; (Health Science) Support Services; and Information Support and Services. Additional programs in other pathways will be added as the Academy develops, providing broader academic and employment opportunities for more students. Virginia Polytechnic Institute and State University will provide staff development in Integrative STEM Education, helping the Academy assimilate a cross-disciplinary pedagogy in STEM/CTE education.

Expected student outcomes include improved high school graduation rates and enrollment in postsecondary education, as well as the reduced need for remediation and an increase in college student retention, transfer, and graduation. Relevant preparation for employment will be a hallmark of the Academy. Improvement in these areas will be effected through increasing STEM and CTE academic integration, strengthening the five featured pathways, training staff and raising awareness in STEM education, and improving data collection for continuous program improvement. Students will learn subject matter as appropriate through discovery, analysis, inquiry-based research, and on-the-job experience.

**Highlights  
of the  
Academy:**

- The Governor's Academy will be a joint secondary/postsecondary institution.
- Students can earn a college degree at no cost one year after high school graduation.
- Dual enrollment opportunities will exist for grades 11, 12, and beyond.
- Cross disciplinary pedagogy informed by Virginia Polytechnic Institute and State University's I-STEM Education program will be the major focus of staff development for teachers.
- The flexible Academy model will incorporate several pathways beyond the initial five over time.
- Student job shadowing and internships will be available across a variety of disciplines.
- Required Stretch projects will introduce students to real work-related projects.
- Involved business partners will assist in keeping curriculum relevant.
- Summer college coursework will be available.

## **STEM for LIFE Governor's Academy Executive Summary**

**Partnership Members:** Russell County Public Schools; Southwest Virginia Community College; The University of Virginia's College at Wise; Virginia Economic Development Program; Bostic, Tucker and Company; Virginia Coalfield Economic Development Authority; Appalachian Electric Power Company; Southwest Virginia Public Education Consortium; Town of Lebanon

**Lead Entity:** Russell County Public Schools

**Fiscal Agent:** Russell County Public Schools

**Contact Person:** Dr. Lorraine C. Turner, Superintendent  
Russell County Public Schools  
276-889-6518  
[lturner@russell.k12.va.us](mailto:lturner@russell.k12.va.us)

**Academy Location:** STEM for LIFE Governor's Academy  
P.O. Box 8  
One School Board Drive  
Lebanon, Virginia 24266

**Number Students Served:** 284 sixth graders in 2008-2009, 284 seventh graders in 2009-2010, 319 eighth graders in 2010-2011, and 425 high school students taking dual enrollment courses from 2008 through 2012.

**Pathways:** Science and Mathematics  
Engineering and Technology  
Information Support and Services

**Academy Goals and Description:** Russell County Public Schools, in partnership with business, industry, higher education, and local government, has developed the Science, Technology, Engineering and Mathematics for Lifelong Initiatives for Education (STEM for LIFE) Governor's Career and Technical Academy. The Academy will provide opportunities for all students in grades six through twelve to learn about STEM careers that are available locally, regionally, and nationally. In addition, the Academy will develop the academic skills and competencies necessary to prepare students for the work force and postsecondary education in STEM fields. The Academy pathways emphasize both academic and hands-on experiences. To gain parental and other local support for the Academy and its goals, career awareness sessions for parents and community members will be held. It is the philosophy of the STEM for LIFE Academy that a team effort is essential to the success of this program and that ongoing communication is key to its sustainability.

It is the intent of the STEM for LIFE Academy founders to expand into the surrounding school divisions and to produce a pipeline through which all students in southwest Virginia school divisions have access to STEM opportunities.

**Highlights  
of the  
Academy:**

- STEM for LIFE will begin in the sixth grade with students enrolling in the Gateway to Technology sequence, the middle school component of Project Lead the Way, which includes courses in Design and Modeling and the Magic of Electrons. Keyboarding classes will also be required for two nine-week periods.
- All seventh-grade students will continue to develop keyboarding skills. They will enroll in the continuation of the Gateway to Technology sequence through courses in Science of Technology, Automation of Robotics, and Flight and Space.
- A summer program for students in grades seven, eight, and nine will afford students the opportunity to study in the STEM areas and work on an original project.
- Through the Kuder career assessment program, each student will be assessed, explore jobs that align with identified areas of interest, and complete a job interview planner.
- A transition plan for students entering high school will be in place for seventh- and eighth-grade students to assist in a successful high school transition.
- All high school students in the Academy will be required to complete a service-learning project in addition to the internship, mentoring or job shadowing experience.
- Parents will receive updates and projections about career preparation and opportunities which are available locally, regionally, and statewide.
- Dual enrollment courses will be offered through Southwest Virginia Community College either with instructors at the high school or through distance learning.
- Students who graduate from one of the STEM for LIFE Academy pathways will meet necessary requirements in mathematics, science, and career and technical education to qualify for Technical and Advanced Technical diplomas.
- Extensive professional development for all academic and career and technical education teachers, guidance counselors, and administrators responsible for aspects of the Academy began in the spring of 2008 and will continue throughout the first year of the Academy.

## **Stafford Academy for Technology Executive Summary**

<b>Partnership Members:</b>	Stafford County Public Schools; Germanna Community College; Diversified Educational Systems; Employment Resources, Inc.; Fredericksburg Regional Alliance; Fredericksburg Regional Chamber of Commerce; Free Lance-Star; GEICO; Hilldrup Companies; Mary Washington Hospital/Medicorp; Rappahannock Region Small Business Development Center; R.L. Williams, Ltd./Autodesk, Inc.; Spotsylvania Technology Center; Stafford County Economic Development; Stafford County Career and Technical Education Advisory Committee; Stafford Rotary; University of Mary Washington; Virginia Employment Commission; Weldon Cooper Center; Workforce Investment Board, Inc.
<b>Lead Entity:</b>	Stafford County Public Schools
<b>Fiscal Agent:</b>	Stafford County Public Schools
<b>Contact Person:</b>	Ms. Kathleen M. Burant Director of Career and Technical Education Stafford County Public Schools 31 Stafford Avenue Stafford, VA 22554 (540) 658-6672 <a href="mailto:burantkm@staffordschools.net">burantkm@staffordschools.net</a>
<b>Academy Location:</b>	Brooke Point High School North Stafford High School Stafford High School
<b>Number of Students Served:</b>	Maximum of 180 in Phase I
<b>Pathways:</b>	Network Systems Science and Engineering
<b>Academy Goals and Description:</b>	<p>The Stafford Academy for Technology will be used as the catalyst to prepare students to meet both current and projected work force needs through an interdisciplinary course of study bringing science, technology, engineering, and mathematics together across all grade levels, K-16. The Academy will assure excellence by raising the aspirations of all students through: 1) the incorporation of workplace experiences as part of the school program; 2) the implementation of industry assessments; 3) the application of concepts through hands-on learning experiences; 4) the alignment of programs of instruction to emerging job opportunities; and 5) the coordination of related efforts throughout a partnership network.</p> <p>The Academy will open at three sites in Stafford County in the fall of 2008 with one site focusing on the Network Systems pathway and the other two</p>

sites on the Science and Engineering pathway. Access will be provided for students from all five Stafford County high schools. There is a substantial opportunity for dual enrollment coursework and career and technical integration as part of the Academy educational experience. The curriculum of the seven Stafford County middle schools will support and encourage enrollment in the Academy.

**Highlights  
of the  
Academy:**

- The Stafford Academy for Technology has a strong and growing partnership including representatives from business and industry, postsecondary educational institutions, work force and economic development groups, parents, and Stafford County Public Schools.
- A major component of the Academy is the integration of academics and career and technical education staff and curriculum.
- The Stafford Academy for Technology is building upon Project Lead the Way to give students pre-engineering curriculum at the middle and high school levels.
- FIRST Robotics, N-STAR projects and Legos™ will be incorporated into the middle school curriculum so that students will receive hands-on experience applying instructional technology and science and engineering concepts.
- Small learning communities will be a hallmark of the Academy to give students more personalized instruction.
- Required service learning experiences are incorporated into students' Academy experiences.
- The Stafford Academy for Technology will address the needs of special populations and nontraditional students in engineering and technology fields.
- The strong connection with business and industry partners will facilitate mentorships, job shadowing, cooperative education, and internships as early as the tenth grade.
- The two pathways will be the model for expanding the Academy concept to the development of a future STEM-based career and technical education center.

## **Fostering Innovation and Relevance through STEM and Trades (FIRST) Executive Summary**

<b>Partnership Members:</b>	The Pruden Center for Industry and Technology; Suffolk Economic Development; Tidewater Community College; Hampton Roads Research Partnership; Isle of Wight County Public Schools; Suffolk City Public Schools; Isle of Wight Chamber of Commerce; Isle of Wight Economic Development; Isle of Wight County Government; The Pruden Foundation; Sentara Obici Hospital; Starr Motor Company
<b>Lead Entity:</b>	The Pruden Center for Industry and Technology
<b>Fiscal Agent:</b>	City of Suffolk Public Schools
<b>Contact Person:</b>	Mr. Corey McCray, Director The Pruden Center for Industry and Technology (757) 925-5651 <a href="mailto:cormccray@prudencenter.net">cormccray@prudencenter.net</a>
<b>Academy Location:</b>	The Pruden Center for Industry and Technology 4169 Pruden Boulevard Suffolk, VA 23434
<b>Number of Students Served:</b>	Fifty students will be enrolled in the Engineering and Technology Pathway in the fall of 2008.
<b>Pathways:</b>	Engineering and Technology (Modeling and Simulation Support Specialist) Interactive Media (Geographic Information Systems - GIS)
<b>Academy Goals and Description:</b>	<p>The program of study for the FIRST Academy includes two career pathways: Interactive Media with a specialization in Geographic Information Systems (GIS) and Engineering and Technology with a specialization in Modeling and Simulation. The Pruden Center will focus efforts for the 2008-2009 school year on implementing the Modeling and Simulation Support Specialist instructional program, as part of the Engineering and Technology career pathway. Implementation efforts for the 2009-2010 school year will focus on GIS, as part of the Interactive Media career pathway. Long-range plans include developing additional programs of study.</p> <p>The FIRST Academy instructional programs will focus on the integration of academics and Career and Technical Education (CTE), enhanced career development/guidance services, work-based learning offerings, industry credential opportunities and transition agreements, thus creating a seamless transition to postsecondary education and/or high-demand, high-wage, high-skill employment.</p> <p>The goals of the FIRST partnership are to:</p> <ol style="list-style-type: none"><li>1. Increase opportunities for students to receive rigorous academic instruction contextually as part of career and technical education program offerings.</li></ol>

2. Increase the emphasis on STEM career pathways.
3. Develop individualized high school plans to ensure course selections that are aligned with student postsecondary education and career aspirations.
4. Ensure that graduates complete a college and work readiness curriculum, minimally at the level of the Commonwealth Scholars Course of Study.
5. Ensure that graduates will qualify for the Advanced Technical or Technical Diplomas.
6. Incorporate Virginia's Workplace Readiness Skills.

**Highlights  
of the  
Academy:**

- Students completing the Engineering and Technology pathway will have the option of pursuing an Associate of Science degree in Modeling and Simulation Technology at Tidewater Community College. This degree prepares students to enter the work force, and/or transition to a baccalaureate program at Old Dominion University.
- Students completing the Interactive Media pathway will have the option of pursuing a Career Studies Certificate in Surveying and/or an Associate of Liberal Arts degree at Tidewater Community College, enabling them to transition to a baccalaureate program at Old Dominion University.
- FIRST Academy students will receive enhanced science, technology, engineering and mathematics (STEM) instruction through: contextual application/course integration, monthly STEM focus sessions, summer enrichment opportunities, career and technical student organizations (CTSO) activities and enhanced career planning/development.
- The FIRST Academy students will complete a project including a portfolio, presentation, research paper and project components.
- The design of the Modeling and Simulation Support Specialist I and II and GIS courses will support a variety of learning experiences such as project-based learning, simulations, and guest speaker presentations.
- The design of the Modeling and Simulation Support Specialist I and II and GIS courses will also support a variety of external workplace learning experiences such as Student Technical Internships (STIs), job-shadowing, and mentorships.

## **The Loudoun Governor's Career and Technical Academy Executive Summary**

<b>Partnership Members:</b>	Loudoun County Public Schools; Monroe Technology Center; Northern Virginia Community College; Shenandoah University; Virginia Polytechnic Institute and State University; George Washington University; REHAU; Fortessa, Inc.; Lockheed Martin; Metropolitan Washington Airports Authority; America Online, LLC; Loudoun County Economic Development, The Claude Moore Charitable Foundation; TELOS/Xacta Corporation; Hayes-Large Architects; Jerry's Automotive Group
<b>Lead Entity:</b>	Loudoun County Public Schools
<b>Fiscal Agent:</b>	Loudoun County Public Schools
<b>Contact Person:</b>	Ms. Shirley L. Bazdar Director of Career and Technical Education Loudoun County Public Schools 571-252-1070 <a href="mailto:shirley.bazdar@loudoun.k12.va.us">shirley.bazdar@loudoun.k12.va.us</a>
<b>Academy Location:</b>	The Loudoun Governor's Career and Technical Academy 715 Childrens Center Road, SW Leesburg, Virginia 20175
<b>Number of Students Served:</b>	One hundred twenty-five high school students will have the opportunity to enroll in the Academy for the 2008-2009 school year. Future plans are in place to expand and grow Academy programs.
<b>Pathways:</b>	Plant Systems Diagnostic Services Therapeutic Services Engineering and Technology Facility and Mobile Equipment Management
<b>Academy Goals and Description:</b>	The Loudoun Governor's Career and Technical Academy will provide rigorous academic content within its career and technical instruction, concentrating on five career pathways. Academic integration and STEM curriculum expansion will enhance student learning through curriculum enhancements and targeted staff development with concentrations on integrative applications of mathematics and science. Academic content integration will be facilitated by enrollment in the STEM certificate/degree program at Virginia Polytechnic Institute and State University for identified faculty. A cluster resource teacher will also be identified to assist with curriculum enhancement and monitoring. Each of these tools will be used to connect and integrate academic content areas. Additionally, a partnership with the Loudoun Academy of Science program will enhance the academic rigor and create opportunities for future STEM education initiatives. Graduates of The Loudoun Governor's Career and Technical Academy will complete a college and work readiness curriculum meeting the

Commonwealth Scholars course of study. High school diploma completion will include up to nine career and technical course credits that can be earned, including corresponding industry credentials. Academy graduates will meet the requirements for an Advanced Technical Diploma. Opportunities will be available within Academy programs for students to earn at least nine dual enrollment college credits. Academy programs will utilize Virginia's Workplace Readiness competencies. Advisory committee members will work with Academy students by offering seminars addressing topics such as life skills, background checks, or professional ethics and behaviors.

**Highlights of  
the  
Academy:**

- Dual enrollment opportunities will be available through Northern Virginia Community College and Virginia Polytechnic Institute and State University. Future dual enrollment opportunities will be made available through the George Washington University and Shenandoah University.
- Academy students will receive enhanced science, technology, engineering, and mathematics instruction via the staff development opportunities, curriculum enhancement, and partnerships with the Loudoun Academy of Science, as well as advisory and planning committee member participation.
- The Health Science cluster pathways contain two new and innovative pathway programs. Curriculum is currently being developed at the CTE Resource Center for these two pathways. The Medical Laboratory Technology and Radiology Technology pathway programs have been created through the support and partnership of the Claude Moore Charitable Foundation and the Inova Healthcare System.
- The Agriculture, Food and Natural Resources Plant Systems pathway is aligned with the global movement to develop more green technologies and practices to conserve and protect earth's natural resources.
- The Transportation, Distribution and Logistics Facility and Mobile Equipment Maintenance pathway will provide direct instruction in the development and maintenance of alternative fuels and hybrid vehicles.
- The Engineering and Technology pathway offers a digital visualization and animation program. This program prepares students to enter the evolving career fields of animation, gaming and software development, prototyping, and rendering.

**VIRGINIA'S TECHNICAL SKILL ATTAINMENT ASSESSMENT**

**STEP ONE OBJECTIVE:** Strengthen the validity and reliability of the Student Competency Record system so it can be used as a part of Perkins IV technical skills assessment.

**Beginning 2007 – 2008**

**STRATEGIES:**

- 1. Student Competency Records will be used correctly by CTE teachers as a reliable formative assessment component of Perkins technical skills assessment.**

**Direct Benefit to Teaching and Learning:**

- Teachers are in the best position to assess student learning in a formative fashion.

**Current Reality:**

- Student Competency Records are not always used by CTE teachers according to reliability standards.

**Gap Analysis:**

- Guidelines are needed for the use of Student Competency Records by CTE teachers.

**Progress Measures:**

- CTE directors report and certify that SCRs are being used correctly by teachers in all courses.

**Key Department of Education Strategies to Reach Target:**

- Guidelines for the use of Student Competency Records have been developed and made available to school divisions.
- A certification form has been developed for CTE directors and teachers to attest to the correct use of SCRs (to include signature of division superintendent).

**Key School Division Collaborative Strategies to Reach Target:**

- CTE directors will meet with teachers to explain the importance of keeping reliable SCRs, and that this system will be a major component in meeting Perkins IV technical skills requirements.
- School division will utilize the SCR sign-off form to attest to the fact that the competency check-off system was used correctly by CTE teachers.
- Principals will expect teachers to follow state developed guidelines for the use of SCR, and will work with CTE administration to ensure compliance.

**2. Establish a student performance benchmark pertaining to the use of Student Competency Records.**

**Direct Benefit to Teaching and Learning:**

- Students will be expected to achieve a satisfactory rating on at least 80% of the essential course competencies in the terminal course of a CTE program sequence as determined by the teacher's rating of one, two, or three for each essential competency using the SCR rating scale.

**Current Reality:**

- Student Competency Records are not always used to assess technical skills by CTE teachers according to accepted reliability standards.

**Gap Analysis:**

- Guidelines are needed to outline the correct use of Student Competency Records by CTE teachers.

**Progress Measures:**

- CTE directors report the number of graduating completers who are meeting at least 80% of CTE course competencies (terminal course of completer sequence).

**Key Department of Education Strategies to Reach Target:**

- Guidelines for the correct use of the Student Competency Records has been developed and made available to school divisions.

**Key School Division Collaborative Strategies to Reach Target:**

- CTE directors will meet with teachers to explain the importance of keeping reliable Student Competency Records, and that this internal student evaluation system will be a major component in meeting Perkins IV technical skills assessment requirements.

**Other Key Stakeholder Collaborative Strategies to Reach Target:**

- Principals will expect teachers to follow state developed guidelines for the use of SCRs, and will work with CTE administration to ensure compliance.

3. **The use of “Student Competency Records” (SCR) as a valid assessment method:**

- serves to recognize and respect the expertise of the CTE instructor to evaluate student knowledge and technical skill; and
- is considered an internal assessment. External examinations cannot duplicate the instructor’s comprehensive and formative appraisal of students’ mastery of the skills and knowledge included in a CTE course.

**STEP TWO OBJECTIVE:** Assist each school division to establish in 2008 – 2009 a “set” of external credentials that can be used to test a baseline number (33%) of graduating CTE completers with an acceptable pass rate (50% or above).

**Beginning 2008 – 2009**

**STRATEGIES:**

1. **External credentials will be used to test at least 33% of all graduating CTE completers in each school division.**

**Direct Benefit to Teaching and Learning:**

- Students will gain industry standard skill sets (in the form of a recognized external credential) that will, either benefit them in gaining entry-level employment, and/or serve as a “stepping stone” in building a resume for a chosen career pathway.

**Current Reality:**

- A significant number of school divisions are not using external credentialing to test at least 33% of their graduating CTE completers.

**Gap Analysis:**

- Many school divisions need assistance in selecting and establishing a baseline “set” of external credentials for testing graduating CTE completers.

**Progress Measures:**

- CTE directors report testing data to Department of Education that demonstrates external credentialing is being used to test at least 33% of their graduating CTE completers for 2008 – 2009

**Key Department of Education Strategies to Reach Target:**

- Implementation data (reflecting credentialing usage in Virginia for the last two school years) have been collected and posted to Virginia's credentialing Web site for each CTE program.
- Reference information on credentialing entities and options for CTE programs are available in the Administrative Planning Guide as well as on Virginia's credentialing Web page.
- Provide state funding for technical skills assessment using external credentials based on number of students in related CTE classes.

**Key School Division Collaborative Strategies to Reach Target:**

- Implement a testing process, using one or more external credentials (division minimum "set"), that will test at least 33% of all graduation CTE completers for 2008 – 2009.
- If state funding is not adequate, allocate funding to test at least 33% of CTE program completers.
- School principals and division superintendent monitor and support the testing process for the division's minimum "Set" of external credentials as used by specific CTE classes

**2. Graduating CTE completers tested with external credentials (using division's chosen minimum "set") achieve at least 50% average pass rate.**

**Direct Benefit to Teaching and Learning:**

- Students will gain self-esteem as they prove that they can master market-standard technical skill sets.

**Current Reality:**

- Many credentials are being used with a less than desirable student pass rate percentage.

**Gap Analysis:**

- Efforts are needed to determine the cause of low student pass rates for any external credential not meeting at least a 50% pass rate.

**Progress Measures:**

- CTE directors report testing data to Department of Education that demonstrates external credentialing is being used to test at least 33% of their graduating CTE completers achieving an average 50% pass rate.

**Key Department of Education Strategies to Reach Target:**

- Assist school divisions in achieving success with their minimum "set" of credentials chosen for Perkins IV technical skills assessment.

**Key School Division’s Collaborative Strategies to Reach Target:**

- Develop program improvement strategies (i.e., curriculum alignment and targeted instructional methods) that will improve the utilization of credentials in CTE classes in an effort to achieve at least an average 50% student pass rate.
- School principals and division superintendent monitor and support the testing process for the division’s minimum “set” of external credentials as used by CTE classes.

**STEP THREE OBJECTIVE:** Assist school divisions to begin the process of “continuous improvement” for technical skills assessment by establishing external specific credentialing benchmarks.

**Beginning 2008 – 2009**

**STRATEGIES:**

- 1. Establish external credentialing benchmarks relating to the NUMBER of graduating completers tested in CTE program.**

**Direct Benefit to Teaching and Learning:**

- As many graduating completers as possible in CTE programs will have an opportunity to demonstrate competency in relevant job market skill sets.

**Current Reality:**

- A majority of school divisions are not testing 100% of graduating CTE completers using at least one external credential.

**Gap Analysis:**

- Realistic “continuous improvement” goals are needed for technical skills assessment of graduating CTE completers.

**Progress Measures:**

- School divisions report to the Department of Education on one or more of the following continuous improvement goals: increase in the total number of CTE completers tested with an external credential or increase in the total number of CTE areas and programs that are using external testing for CTE graduating completers.

**Key Department of Education Strategies to Reach Target:**

- Negotiate with each school division regarding the achievement of “continuous improvement” goals. Provide comparative data on credentialing implementation statewide that will help each school division set realistic “continuous improvement” goals.

**Key School Division Collaborative Strategies to Reach Target:**

- Develop a plan and process for establishing “continuous improvement” benchmarks regarding the number of CTE completers externally tested as well as the number of CTE areas and programs utilizing external credentialing for CTE graduating completers.
- School principals and division superintendent monitor and support the testing process for the division’s minimum “set” of external credentials as used by specific CTE programs.

**2. Establish realistic credentialing benchmarks relating to the PERCENTAGE of graduating completers who pass external credentials.**

**Direct Benefit to Teaching and Learning:**

- As many CTE completers as possible will have a successful opportunity to demonstrate competence in job market skill sets by passing one or more external credentials.

**Current Reality:**

- Pass rates on many external credentials being utilized are not at desirable levels.

**Gap Analysis:**

- Realistic “continuous improvement” goals for credentialing student pass rates are needed for each external credential being used to test graduating CTE completers.

**Progress Measures:**

- School divisions report to the Department of Education on one or more of the following: Increase in the division’s average pass rate for all CTE completers tested or increase in the pass rate for each specific credential used as a part of the division’s minimum “set” of credentials.

**Key Department of Education Strategies to Reach Target:**

- Negotiate with each school division regarding the achievement of “continuous improvement” goals. Provide comparative data on credentialing implementation statewide that will help each school division set realistic “continuous improvement” goals.

**Key School Division Collaborative Strategies to Reach Target:**

- Develop a process for establishing continuous improvement goals regarding the percentage of CTE completers externally tested who pass specific credentials as well as the average passing percentage for CTE areas and programs utilizing external credentialing for graduating completers.
- School principals and division superintendent monitor and support the testing process for the division's minimum "set" of external credentials as used by specific CTE programs.



### **Wednesday, November 16, 2005 - Continued**

12:45 – 1:45

Lunch

2:00 - 3:45

Routed & Routing Protocols

Andy Wolfenbarger

Routed protocols transport data across a network. Routing protocols allow routers to choose the best path for data from a source to a destination.

### **Thursday, November 17, 2005**

9:00 – 10:45

DHCP

Nels Marvin

DHCP enables DHCP clients on an IP network to obtain their configurations from a DHCP server.

11:00 – 4:00

Lunch/Review/Testing

# Board of Education Agenda Item

Item: \_\_\_\_\_ H. \_\_\_\_\_

Date: September 25, 2008

**Topic:** Final Review of Proposed Board of Education Meeting Dates for the 2009 Calendar Year

**Presenter:** Dr. Margaret N. Roberts, Executive Assistant to the Board of Education

**Telephone:** 804/225-2924

**E-mail:** [Margaret.Roberts@doe.virginia.gov](mailto:Margaret.Roberts@doe.virginia.gov)

**Origin:**

Topic presented for information only (no board action required)

Board review required by  
 State or federal law or regulation  
 Board of Education regulation  
 Other: Board of Education Bylaws

Action requested at this meeting

Action requested at future meeting:

**Previous Review/Action:**

No previous board review/action

Previous review/action: First Review of Proposed Meeting Dates  
date: July 24, 2008  
action: Received proposed dates for first review

**Background Information:** Section 2 of Article Three of the Bylaws of the Board of Education states the following:

Section 2. Regular Meetings. Prior to and no later than the annual meeting (February), the Board shall adopt a tentative schedule for regular meetings for the applicable calendar year. Such schedule shall be subject to the change, alteration or adjustment by the President as he or she deems appropriate, to accommodate the operation of the Board as is necessary.

**Summary of Major Elements:** In recent years, the Board of Education has met monthly except for the months of August and December. Meetings are typically held on the fourth Thursday of the month, although this is not a requirement. Exceptions are the January meeting which is held early in the month to coincide with the opening of the General Assembly session, and the November meeting, which is scheduled to avoid meeting during Thanksgiving week. The April meeting is typically a two- or three-day planning session. Meetings are scheduled to avoid major religious or secular holidays.

In addition to the regular, monthly business meetings, the President may call special meetings of the full Board of Education and its committees, as deemed necessary. Unless otherwise announced by the President, all Board of Education meetings will be held in the Jefferson Conference Room on the 22<sup>nd</sup> floor of the James Monroe Building, 101 North 14<sup>th</sup> Street, Richmond, Virginia 23219.

The proposed meeting dates for 2009 are as follows:

Thursday, January 15, 2009  
Thursday, February 19, 2009  
Thursday, March 26, 2009  
Wednesday-Thursday, April 22-23, 2009  
Thursday, May 28, 2009  
Thursday, June 25, 2009  
Thursday, July 23, 2009  
Thursday, September 24, 2009  
Thursday, October 22, 2009  
Tuesday, November 17, 2009

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board of Education adopt the list of meeting dates for 2009.

**Impact on Resources:** Funding to support the expenses related to the meetings of the Board of Education are provided from the Department of Education's general operating budget, which is appropriated by the General Assembly.

**Timetable for Further Review/Action:** Following adoption, the dates will be widely disseminated and posted on the appropriate Web sites.

**ATTACHMENT:**

**BOARD OF EDUCATION  
FINAL REVIEW OF MEETING DATES  
2009 CALENDAR YEAR**

Thursday, January 15, 2009

Thursday, February 19, 2009

Thursday, March 26, 2009

Wednesday-Thursday, April 22-23, 2009

Thursday, May 28, 2009

Thursday, June 25, 2009

Thursday, July 23, 2009

Thursday, September 24, 2009

Thursday, October 22, 2009

Tuesday, November 17, 2009

# Board of Education Agenda Item

Item: I.

Date: September 25, 2008

**Topic:** First Review of Proposed Revised *Guidelines and Standards of Learning for Family Life Education* as Required by the 2008 General Assembly

**Presenter:** Dr. Cynthia A. Cave, Director of Student Services

Telephone Number: 804-225-2818

E-Mail Address: Cynthia.Cave@doe.virginia.gov

## Origin:

Topic presented for information only (no board action required)

Board review required by

State or federal law or regulation

Board of Education regulation

Other: \_\_\_\_\_

Action requested at this meeting

Action requested at future meeting: October 23, 2008 (date)

## Previous Review/Action:

No previous board review/action

Previous review/action

date \_\_\_\_\_

action \_\_\_\_\_

## Background Information:

The Family Life Education requirements of the Board of Education were first enacted in 1987 by the General Assembly. In 1988, the Board of Education prepared a document that included Standards of Learning (SOL) Objectives and Descriptive Statements, guidelines for training individuals who will be teaching family life education, and guidelines for parent/community involvement. The 1988 guidelines were revised in 2002 to include the requirements of HB 1206 (benefits of adoption), in 2004 to include the requirements of HB 1015 (sexual assault) and again in 2007 to include HB 1916 (dating violence and the characteristics of abusive relationships). In the 2008 session of the Virginia General Assembly, Senate Bill 640 amended § 22.1-207.1 of the *Code of Virginia* to require that information concerning mental health education and awareness be included in the Family Life Education curriculum guidelines.

**§22.1-207.1. Family life education.**

The Board of Education shall develop by December 1, 1987, standards of learning and curriculum guidelines for a comprehensive, sequential family life education curriculum in grades K through 12. Such curriculum guidelines shall include instruction as appropriate for the age of the student in family living and community relationships; abstinence education; the value of postponing sexual activity; the benefits of adoption as a positive choice in the event of an unwanted pregnancy; human sexuality; human reproduction; dating violence; the characteristics of abusive relationships; steps to take to avoid sexual assault, and the availability of counseling and legal resources, and, in the event of such sexual assault, the importance of immediate medical attention and advice, as well as the requirements of the law; the etiology, prevention and effects of sexually transmitted diseases; and mental health education and awareness.

**Summary of Major Elements:**

As shown in the attached, the *Guidelines and Standards of Learning for Family Life Education* have been revised in accordance with the 2008 legislation. The descriptive statements supporting the *Standards of Learning* objectives have been amended to reflect the required age-appropriate changes in the guidelines. Some descriptive statements have been edited to reflect correct terminology and grammar. Revised standards are listed below.

<b>Grade Level</b>	<b>Amended Standards of Learning Descriptive Statements</b>	<b>Page</b>
Kindergarten	K.1, K.4, K.6, K.7, K.10	15-16
First Grade	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11	17-18
Second Grade	2.1, 2.4, 2.6, 2.8	20
Third Grade	3.1, 3.3, 3.4, 3.5, 3.6, 3.9, 3.12	22-23
Fourth Grade	4.2, 4.4, 4.6, 4.8	24-25
Fifth Grade	5.3, 5.6, 5.7, 5.9, 5.10, 5.14	26-27
Sixth Grade	6.6, 6.7, 6.9, 6.10, 6.11, 6.12	28-29
Seventh Grade	7.2, 7.4, 7.5, 7.6, 7.7, 7.10, 7.11, 7.13	30-32
Eighth Grade	8.3, 8.5, 8.6, 8.8, 8.9, 8.10, 8.11, 8.14	33-35
Ninth Grade	9.4, 9.5, 9.6, 9.7, 9.10, 9.12, 9.13	36-37
Tenth Grade	10.1, 10.5, 10.6, 10.10, 10.14	38-39
Eleventh Grade	11.3, 11.4, 11.5, 11.10, 11.14	41-43
Twelfth Grade	12.3, 12.5, 12.7, 12.8, 12.9, 12.11	44-45

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education accept for first review the revised guidelines regarding Family Life Education.

**Impact on Resources:**

The financial impact will be minimal. The revised document will be posted on the Web site. School divisions will be informed of the revisions by way of a Superintendent's Memo.

**Timetable for Further Review/Action:**

Adoption of the revised *Guidelines and Standards of Learning for Family Life Education* is requested at the October 23, 2008, Board of Education meeting. Upon Board of Education adoption of the 2008 revised guidelines, the Virginia Department of Education will make them available to school divisions.

# Family Life Education

Board of Education Guidelines  
and  
Standards of Learning  
for Virginia Public Schools



Commonwealth of Virginia  
Department of Education  
Richmond, VA 23218-2120

Revised  
September 2008

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# FAMILY LIFE EDUCATION

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*Revised 2008*

# FAMILY LIFE EDUCATION

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CODE OF VIRGINIA §22.1-207.1  
FOR FAMILY LIFE EDUCATION

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## *CODE OF VIRGINIA*

### **§22.1-207.1. Family life education.**

The Board of Education shall develop by December 1, 1987, standards of learning and curriculum guidelines for a comprehensive, sequential family life education curriculum in grades K through 12. Such curriculum guidelines shall include instruction as appropriate for the age of the student in family living and community relationships; abstinence education; the value of postponing sexual activity; the benefits of adoption as a positive choice in the event of an unwanted pregnancy; human sexuality; human reproduction; dating violence; the characteristics of abusive relationships; steps to take to avoid sexual assault, and the availability of counseling and legal resources, and, in the event of such sexual assault, the importance of immediate medical attention and advice, as well as the requirements of the law; the etiology, prevention and effects of sexually transmitted diseases; and mental health education and awareness.

All such instruction shall be designed to promote parental involvement, foster positive self concepts and provide mechanisms for coping with peer pressure and the stresses of modern living according to the students' developmental stages and abilities. The Board shall also establish requirements for appropriate training for teachers of family life education, which shall include training in instructional elements to support the various curriculum components.

For the purposes of this section, "abstinence education" means an educational or motivational component which has as its exclusive purpose teaching the social, psychological, and health gains to be realized by teenagers' abstaining from sexual activity before marriage.

(1987, c. 371; 1999, c. 422; 2002, c. 554; 2004, c. 1030; 2007, c. 32.; 2008, c.0417)

### **§ 22.1-207.2. Right of parents to review certain materials; summaries distributed on request.**

Every parent, guardian or other person in the Commonwealth having control or charge of any child who is required by § 22.1-254 A to send such child to a public school shall have the right to review the complete family life curricula, including all supplemental materials used in any family life education program. A complete copy of all printed materials and a description of all audio-visual materials shall be kept in the school library or office and made available for review to any parent or guardian during school office hours before and during the school year. The audio-visual materials shall be made available to parents for review, upon request, on the same basis as printed materials are made available.

Each school board shall develop and, when so requested by an individual parent or guardian of a student participating in the family life education program, distribute to that parent or guardian, a summary designed to assist parents in understanding the program implemented in its school division as such program progresses and to encourage parental guidance and involvement in the instruction of the students. Such information shall reflect the curricula of the program as taught in the classroom.

(1989, c. 515; 1991, cc. 139, 526.)

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# INTRODUCTION

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## INTRODUCTION

In 1987, §22.1-207.1 of the *Code of Virginia* was amended to direct the Board of Education to develop standards of learning and curriculum guidelines for a comprehensive, sequential family life education (FLE) curriculum in grades K through 12. From February 1987 to December 1987, individuals from public schools (including administrators and teachers), state agencies, parent groups, and not-for-profit organizations that provided family life services contributed time, resources, and expertise to help develop a report to submit to the Virginia General Assembly. The report *Family Life Education: Board of Education's Response to House Bill No. 1413* included sections on the Board of Education guidelines for setting up a required FLE program, Standards of Learning objectives and descriptive statements for grades kindergarten through 12, guidelines for training individuals that teach FLE and for involving parents and community-based organizations in the local FLE program.

The FLE program was funded by the General Assembly during its 1988 session based on the plan developed by the Board of Education and the Department of Education. The program scheduled for implementation by all school divisions during the 1989-90 school year, provided guidance to localities in developing comprehensive, age-appropriate, and sequential instruction in specific content areas. Program flexibility allowed options for the local planning teams. The program could cover grades K through 10 or K through 12, depending upon the desires of a school division. School divisions were permitted to use state-approved Standards of Learning objectives or develop their own learner objectives. Educators identified as FLE teachers participated in in-depth staff development workshops over a two-year period.

Each school division was required to appoint a community involvement team to assist in the development of the program and to promote community involvement. The Board of Education guidelines were written to assure that parents had opportunities to review the program annually and opt their children out of all or part of the program.

During the fall and winter of school year 1992-93, the Department of Education conducted a study of the FLE program in the Virginia public schools. The study resulted from an agreement between the 1992 General Assembly and the Department of Education. A self-report survey of FLE programs was repeated in 2004 and 2006. Results again indicated compliance with mandates and policies. Of the 132 school divisions serving students in the state, 120 divisions, or 91 percent, responded to the 2006 survey. Eighty-eight percent, or 105, of school divisions surveyed in 2006 offered Family Life Education programming.

Also in 1992, the Virginia General Assembly amended §22.1-275.1 of the *Code of Virginia* to direct local school boards to establish a school health advisory board of no more than 20 members. The legislation specified that the local board shall consist of broad-based community representation including, but not limited to, parents, students,

health professionals, educators, and others. Many localities opted for their school health advisory board to also serve as the FLE community involvement team.

In September 1997, the *Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10)* were ~~was~~ amended by the Board of Education to state that “Each school may implement the Standards of Learning for the Family Life Education program promulgated by the Board of Education or a Family Life Education program consistent with the guidelines developed by the Board of Education which shall have the goals of reducing the incidence of pregnancy and/or sexually-transmitted disease and substance abuse among teenagers.”

The 1999 Virginia General Assembly amended §22.1-207.1 of the *Code of Virginia* and added “abstinence education” as a Family Life Education instructional topic to the content areas identified in 1987: “...family living and community relationships, the value of postponing sexual activity, human sexuality, human reproduction, and the etiology, prevention and effects of sexually transmitted diseases.” The Virginia Department of Education and Virginia Department of Health cooperated to strengthen abstinence education staff development workshops.

House Bill 1206, passed by the 2002 Virginia General Assembly, required the Board of Education to include “the benefits of adoption as a positive choice in the event of an unwanted pregnancy” in its curriculum guidelines for a comprehensive, sequential Family Life Education curriculum. The bill also required the Board to specify that training of teachers of Family Life Education include training in instructional elements to support the various curriculum components.

House Bill 1015 passed by the 2004 Virginia General Assembly, required the Board of Education to include “steps to take to avoid sexual assault, and the availability of counseling and legal resources, and, in the event of such sexual assault, the importance of immediate medical attention and advice, as well as the requirements of the law” in its curriculum guidelines for a comprehensive, sequential Family Life Education curriculum.

House Bill 1916, passed by the 2007 Virginia General Assembly, required the Board of Education to include “dating violence and the characteristics of abusive relationships” in its curriculum guidelines for a comprehensive, sequential Family Life Education curriculum.

Senate Bill 640, passed by the 2008 Virginia General Assembly, required the Board of Education to include “mental health education and awareness” in its curriculum guidelines for a comprehensive, sequential Family Life Education curriculum.

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**BOARD OF EDUCATION GUIDELINES FOR  
FAMILY LIFE EDUCATION**

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## **BOARD OF EDUCATION GUIDELINES FOR FAMILY LIFE EDUCATION**

- I. The following guidelines shall be followed in the implementation of the Board of Education's approved Family Life Education program.
  - A. A community involvement team, or school health advisory board, shall be identified and should include individuals such as a person from the central office, an elementary school principal, a middle school principal, a high school principal, teachers, a school board member, parents, one or more members of the clergy, a member of the medical profession, and others in the community.
  - B. There must be evidence of broad-based community involvement and an annual opportunity for parents and others to review curriculum and instructional materials prior to the beginning of actual instruction.
  - C. Those individuals selected by the localities to teach the Family Life Education program shall participate in the training program sponsored by the Department of Education.
  - D. A Family Life Education leader from each grade level shall be identified to assist in training individuals who will be teaching, to work with a community involvement team, and to assist in program implementation and evaluation.
  - E. Medical professionals shall be involved, where appropriate, to help teach the content of the Family Life Education curriculum and to serve as a resource to students and to parents.
  - F. Local training and follow-up activities shall involve the community in understanding and implementing the Family Life Education program.
  - G. Local agencies/organizations/support systems shall be identified and used as resources for the Family Life Education program.
  - H. An "opt-out" procedure shall be provided to ensure communication with the parent or guardian for permission for students to be excused from all or part of the program.
  - I. A plan for teaching sensitive content in sex-separated classes shall be announced publicly.
  - J. The Family Life Education Standards of Learning objectives approved by the Board of Education shall be used by the local school board. However, local school divisions may reassign the grade designation of the Standards of Learning objectives within grades K-6. The grade designation for objectives within grades 7-12 may be reassigned only one grade level, up or down. Also, the program may be adopted for kindergarten through grade 10 or kindergarten through grade 12; however, local scheduling of Family Life Education shall avoid any interruption or detraction from instruction in basic skills in elementary schools or in those courses required for graduation in the secondary schools.

- K. The curriculum shall include education about those sections of statutory law applicable to instructional units relating to sexual conduct and misconduct and legal provisions relating to family life.
  - L. The curriculum shall include mental health education and awareness as applicable to instructional units relating to family life.
- II. The following guidelines shall be followed in the implementation of the Family Life Education program developed locally.
- A. The Family Life Education program developed locally shall be comprehensive and sequential and include the following content areas and may include others at the discretion of the local school board:
    - 1. Family living and community relationships;
    - 2. The value of postponing sexual activity until marriage (abstinence education);
    - 3. Human sexuality;
    - 4. Human reproduction and contraception, including the benefits of adoptions as a positive choice in the event of an unwanted pregnancy;
    - 5. The etiology, prevention, and effects of sexually transmitted diseases;
    - 6. Stress management and resistance to peer pressure;
    - 7. Development of positive self-concepts and respect for others, including people of other races, religions, or origins;
    - 8. Parenting skills;
    - 9. Substance abuse;
    - 10. Child abuse;
    - 11. Prevention of sexual assault and, in the event of sexual assault, the importance of receiving immediate medical attention and advice, knowledge of the requirements of the law, and use of resources such as counseling and legal services; ~~and~~
    - 12. Dating violence and the characteristics of abusive relationships; and
    - 13. Mental health education and awareness.
  - B. The Family Life Education program developed locally shall include and adhere to the following:
    - 1. A community involvement team, or school health advisory board, shall be identified and should include individuals such as a person from the

central office, an elementary school principal, a middle school principal, a high school principal, teachers, a school board member, parents, one or more members of the clergy, a member of the medical profession, a mental health practitioner, and others in the community.

2. There must be evidence of broad-based community involvement and an annual opportunity for parents and others to review curriculum and instructional materials prior to the beginning of actual instruction.
3. Those individuals selected by the localities to teach the local Family Life Education program shall participate in the training program sponsored by the Department of Education. The training program shall include training in instructional elements to support the various curriculum components.
4. A Family Life Education leader from each grade level shall be identified to assist in training individuals who will be teaching, to work with a community involvement team, and to assist in program implementation and evaluation.
5. Medical and mental health professionals shall be involved, where appropriate, to help teach the content of the Family Life Education curriculum and to serve as a resource to students and to parents.
6. Local training and follow-up activities shall involve the community in understanding and implementing the Family Life Education program.
7. Local agencies/organizations/support systems shall be identified and used as resources for the Family Life Education program.
8. An "opt-out" procedure shall be provided to ensure communication with the parent or guardian for permission for students to be excused from all or part of the program.
9. A plan for teaching sensitive content in sex-separated classes shall be announced publicly.
10. Local scheduling of Family Life Education, to include kindergarten through grade 10 or kindergarten through grade 12, shall avoid any interruption or detraction from instruction in the basic skills in the elementary schools or in those courses required for graduation in the secondary schools.
11. A local curriculum plan shall use as a reference the Family Life Education Standards of Learning objectives approved by the Board of Education and shall provide age-appropriate instruction in relation to students' developmental stages and abilities.
12. The curriculum shall include education about those sections of statutory law applicable to instructional units relating to sexual conduct and misconduct and legal provisions relating to family life.

13. The curriculum shall include mental health education and awareness as applicable to instructional units relating to family life.

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**STANDARDS OF LEARNING OBJECTIVES  
AND DESCRIPTIVE STATEMENTS**

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## KINDERGARTEN

- K.1 The student will experience success and positive feelings about self.**  
Descriptive Statement: ~~These experiences are provided by the teacher through the climate of the classroom environment and include, but are not limited to, experiencing success in school, effectively handling routines, experiencing self-acceptance, and acceptance from others. This includes experiencing success in school work and home tasks, pride in his or her body, the effective handling of routine situations, and acceptance from others. These experiences are provided by the teacher through the climate of the classroom environment.~~ Parents are encouraged to reinforce these positive experiences and feelings at home. Emphasis is placed on respect for racial and ethnic differences.
- K.2 The student will experience respect from and for others.**  
Descriptive Statement: Teachers and other adults at school actively listen to and accept feelings and opinions of the child. A classroom climate that encourages positive mental health development and protects the child from physical and emotional infringements by others is provided. The child also learns and practices courtesy and good manners.
- K.3 The student will become aware of the effects of his or her behavior on others and the effects of others' behavior on himself or herself.**  
Descriptive Statement: The teacher uses appropriate descriptive language to explain to a child how his or her behavior affects others positively as well as negatively. The same descriptive language is used to explain to a child the effects of others' behavior on him or her. This approach is reinforced by other school personnel and parents are encouraged to continue such explanations at home. The child is introduced to the concept of privacy, especially in the use of bathroom facilities. In addition, the importance of avoiding gossip about others' personal or family problems is stressed.
- K.4 The student will recognize that everyone is a member of a family and that families come in many forms.**  
Descriptive Statement: This includes a variety of family forms: traditional or two-parent families--mother, father, and children; extended families--relatives other than the immediate family living in the home; single-parent families; adoptive families; foster families; families with stepparents; and blended families--new families formed by the marriage of a man and woman with children from previous marriages. Recognition and inclusion will foster positive mental health.
- K.5 The student will identify members of his or her own family.**  
Descriptive Statement: This refers to identifying the adult and child members of the student's family.
- K.6 The student will develop an awareness of positive ways in which family members show love, affection, respect, and appreciation for each other.**  
Descriptive Statement: The focus is on the appropriate words and actions that promote positive mental health development. Through words and actions which convey care, protection and guidance, such as touching, listening, hugging, praising, encouraging, supporting, helping and playing, the child will understand that rules are made for safety, and protection. which convey care, protection and guidance. This includes touching, listening, hugging, praising, encouraging, supporting, helping and playing. It also includes helping the child understand that rules are made for safety and protection.

**K.7 The student will realize that physical affection can be an expression of friendship, of celebration, or of a loving family.**

Descriptive Statement: It is important for the student to understand that appropriate expressions of affection are healthy for the individual and for the family. The student will begin to understand the differences between appropriate and inappropriate expressions of affection. This understanding will foster positive mental health.

**K.8 The student will recognize the elements of good and bad touches by others.**

Descriptive Statement: Elements of good touches by others are identified as follows: (1) touching that can be done in front of anyone; (2) touching that is not a secret; (3) touching that makes the child feel good and not uncomfortable; (4) touching that is done to provide cleaning or medical care for the child; and (5) touching that is an expression of affection by a family member. Bad touches by others include the following: (1) touching on private parts of the body; (2) touching to be kept secret; and (3) touching that could produce bad feelings.

**K.9 The student will demonstrate how to say "no" to inappropriate approaches from family members, neighbors, strangers, and others.**

Descriptive Statement: This involves learning how to say "no" in a loud voice while standing up and looking directly at the person. It is important for children to know that they should tell or report such happenings to a trusted adult such as a parent, teacher, minister, grandparent, or guardian. In addition, they should understand the need to continue telling about inappropriate approaches until someone listens and responds.

**K.10 The student will identify "feeling good" and "feeling bad."**

Descriptive Statement: Descriptive words are used to help the child identify pleasant and unpleasant feelings. Parents are encouraged to reinforce expressions of feelings at home and to work with the teacher in a team approach to achieving this, ~~and other objectives~~ which encourages good mental health functioning.

**K.11 The student will find help safely if lost.**

Descriptive Statement: Students learn their full names, addresses, telephone numbers, and how to find reliable help if lost in a mall or other public place.

## FIRST GRADE

- 1.1 The student will experience continuing success and good feelings about self.**  
Descriptive Statement: The teacher continues to provide a classroom environment that fosters experiences of success in school work, in self-acceptance of body image, in the handling of routine situations, and in group activities. The student is made aware of any behavior on his or her part that causes others to have ~~bad~~ hurt feelings. Parents are encouraged to reinforce successful experiences, ~~and~~ self-esteem, and good mental health practices at home.
- 1.2 The student will experience continuing respect from others.**  
Descriptive Statement: Teachers and other adults at school continue active listening and acceptance of the feelings and opinions of the child, providing a classroom climate that protects the child from physical, mental and emotional infringement by others. Difficult situations, such as how to handle a bully on the playground, are discussed.
- 1.3 The student will become aware of the effects of his or her behavior on others and the effects of others' behavior on himself or herself.**  
Descriptive Statement: The teacher continues to use appropriate descriptive language to explain to a child how his or her behavior affects others both positively and negatively, and how others' behavior affects him or her. The child learns to respect others and their feelings, and practices good mental health behaviors.
- 1.4 The student will develop an understanding of the importance of a family and of different family patterns.**  
Descriptive statement: The emphasis is on the need for loving parents, or other responsible adult(s) in the family, regardless of the type of family. The student advances from awareness of family forms at the kindergarten level to understanding the importance of the family and its various forms at the first-grade level. The following family patterns are included: two-parent families, extended families--relatives other than the immediate family living in the home, single-parent families, adoptive families, foster families, families with stepparents, and blended families--new families formed by the marriage of a man and woman with children from previous marriages. Recognition and inclusion will foster positive mental health.
- 1.5 The student will identify family members and their responsibilities in contributing to the successful functioning of the family.**  
Descriptive Statement: The focus is on the tasks that must be performed in order for a family to function successfully. Examples of tasks are providing food; providing shelter; providing and caring for clothing; providing money for these and other necessities; providing love and caring, including meeting the needs of elderly or physically and mentally disabled ~~handicapped~~ family members; and providing for fun and play.
- 1.6 The student will realize that human beings and other mammals have babies and that the babies can be breast-fed.**  
Descriptive Statement: Content associated with this objective can be found in books, magazines, films, videos, and other materials, as approved by the school division. Pets may be used to demonstrate mammalian behavior. Parents are encouraged to assist with this objective during the course of normal family activities.

- 1.7 The student will use correct terminology when talking about body parts and functions.**  
Descriptive Statement: ~~Terms included in this approach are urinate, bowel movement, penis, and vulva to substitute for colloquial or slang terminology. Scientific terms such as urinate, bowel movement, penis and breast will be introduced as they occur in daily activities and are not taught directly. These terms are introduced as they occur in daily activities and are not taught directly.~~ Parents are encouraged to reinforce correct terminology at home.
- 1.8 The student will express his or her feelings of happiness, sadness, and anger to the teacher.**  
Descriptive Statement: Teachers help children on an individual basis to recognize and express their feelings of happiness, sadness, and anger. Children are assisted in dealing appropriately with their feelings. If matters of a private nature arise, teachers are urged to contact parents so they can take a team approach to individual student problems. Positive mental health practices will be utilized.
- 1.9 The student will become aware of appropriate behavior to use in dealing with his or her feelings.**  
Descriptive Statement: The focus is on helping the child understand that feelings are different from behavior. The teacher helps the child understand that while feelings do influence behavior, each person can control his or her own behavior and the ways feelings are expressed. It is important for the teacher to help the child know that all feelings are valid. Appropriate strategies for expressing feelings include exercise, games, direct verbalization, art, music, dance, play, storytelling, and creative drama. Positive mental health practices will be utilized.
- 1.10 The student will experience the logical consequences of his or her behavior.**  
Descriptive Statement: The child needs to have the opportunity to make developmentally appropriate choices in his or her daily living and to experience the outcomes (both positive and negative) of his or her choices. The foundation for responsible decision making and positive mental health at all ages involves being allowed to learn from one's choices. Examples of appropriate choices at this grade level include choosing from a list of appropriate foods, choosing from a variety of activities and learning centers, and choosing the sequence in which learning activities are completed. An example of an appropriate consequence would be to clean up a spilled beverage rather than to be punished for this.
- 1.11 The student will realize that physical affection can be an expression of friendship, of celebration, or of a loving family.**  
Descriptive Statement: The child is reminded that appropriate expressions of affection are important for individual and family well-being and that physical affection from family members and friends usually represents good touching. The student will begin to understand the differences between appropriate and inappropriate expressions of affection and the impact on individual mental health.
- 1.12 The student will demonstrate strategies for responses to inappropriate approaches from family members, neighbors, strangers, and others.**  
Descriptive Statement: Elements of good and bad touching are reviewed, and methods of avoiding negative encounters are presented. Children learn how to tell a trusted adult,

such as a parent, teacher, minister, grandparent, or guardian, about such incidents when they occur.

## SECOND GRADE

- 2.1 The student will recognize that everyone has strengths and weaknesses and that all persons need to be accepted and appreciated as worthwhile.**  
Descriptive Statement: The key idea is that all human beings are worthwhile and need to be accepted and appreciated as they are. The emphasis is on daily experiences in which children receive the message that they are worthwhile. In this environment the student is able to use his or her strengths to overcome weaknesses, to realize that not everyone has the same strengths and weaknesses, to change the things he or she can change, and to accept the things that cannot be changed. Care is taken to ensure that children view persons with a physical or mental disability handicap as unique individuals with many strengths.
- 2.2 The student will realize that adults other than parents also provide care and support for children.**  
Descriptive Statement: Adults, other than parents, who provide care and support for children include foster parents; child-care providers; day-care teachers; extended family members; neighbors; family friends; and personnel of community support agencies, civic organizations, and religious organizations.
- 2.3 The student will become aware that babies grow inside the mother's body in a special place called the uterus.**  
Descriptive Statement: The purpose of this objective is to provide basic, age-appropriate information; to demonstrate ease or comfort in talking about reproduction-related topics; and to correct misinformation.
- 2.4 The student will become aware of the need to take responsibility for the effects of his or her behavior on others.**  
Descriptive Statement: Through daily classroom experiences, the teacher can encourage children to express appreciation for positive peer behavior such as helping, sharing, being courteous, accepting others' opinions, and showing respect for others' possessions. When hurtful behavior occurs, children can be encouraged to make restitution by helping the victim solve the problem caused by the behavior. School personnel will use positive mental health practices to resolve problem behavior.
- 2.5 The student will demonstrate appropriate ways of dealing with feelings.**  
Descriptive Statement: Pleasant feelings (for example, those associated with success and praise) and unpleasant feelings (for example, those resulting from anger, rejection, isolation, and failure) are discussed. The student will begin to understand the characteristics of appropriate and inappropriate behavior as it relates to relationships. Appropriate behavior, in response to pleasant and unpleasant feelings, is practiced in pretend situations so that these desirable strategies are available when needed in real-life situations.
- 2.6 The student will realize that physical affection can be an expression of friendship, of celebration, or of a loving family.**  
Descriptive Statement: The teacher continues to reinforce the concept that appropriate expressions of affection are healthy for the individual and for the family. The student

will recognize inappropriate expressions and demonstrate skills to correct inappropriate expressions.

- 2.7 The student will advance in readiness to say "no" and to tell a trusted adult, such as a parent, teacher, minister, grandparent, or guardian, in private about inappropriate approaches from family members, neighbors, strangers, and others.**

Descriptive Statement: This is a review of the elements of good and bad touching, including how to handle inappropriate approaches. The student will understand the differences between appropriate and inappropriate expressions of affection and behavior.

- 2.8 The student will be conscious of how commercials use our emotions to make us want products.**

Descriptive Statement: Children are introduced to the concept of media influences, which is developed further at higher grade levels. The students are given examples of techniques used by the media to create excitement and a desire to purchase products. Students will begin to understand how the media affects mental health issues such as self-image.

## THIRD GRADE

- 3.1 The student will demonstrate a sense of belonging in group work and play.**  
Descriptive Statement: The child experiences cooperative group games and acceptance as a member of the class. This involves reciprocal helping behavior and positive mental health practices. Participation in groups such as the scouts is encouraged.
- 3.2 The student will express what he or she likes about himself or herself to continue developing a positive self-image.**  
Descriptive Statement: Expressive media (for example, exercises, games, art, music, dance, and drama) are used for student expression of the capabilities, personality traits, and physical features that the child likes about himself or herself.
- 3.3 The student will become aware of the changes occurring in family life that affect daily living and produce strong feelings.**  
Descriptive Statement: Changes which occur include moving to a new home, the addition or birth of a sibling, the birth of a handicapped disabled child, death, illness, drug abuse, separation, divorce, remarriage, and children leaving home. Children are assisted in adjusting to such changes on an individual basis through the teacher-parent team approach to problem solving using positive mental health practices.
- 3.4 The student will give examples of healthy coping strategies for dealing with the feelings produced by changes in the family.**  
Descriptive Statement: An essential component is providing a clear explanation of the changes which occur in families. Healthy coping strategies include vigorous physical activity such as exercises and games; talking about feelings; reading books; and creative expressions such as writing, art, music, dance, and drama. In order to foster positive mental health, ~~it~~ it is important that feelings be expressed openly in appropriate ways.
- 3.5 The student will identify external body parts associated with reproduction and elimination, using correct terms.**  
Descriptive Statement: External genitalia are explained, including ~~such~~ correct scientific terms such as penis, scrotum, vaginal opening, opening of the urethra, and anus.
- 3.6 The student will recognize that all human beings grow and develop in a given sequence but that rates and patterns vary with individuals.**  
Descriptive Statement: The student's own biographical data are used to chart growth and development patterns and sequences and to demonstrate and validate individual variations in development. ~~Emphasis is placed also on different rates of learning, and students are taught to be tolerant of those who do not learn quickly. Students are taught to be accepting of other's differences, including physical and mental differences.~~
- 3.7 The student will become aware that both a male and a female are necessary to have a baby.**  
Descriptive Statement: The focus is on the concept that babies begin with a sperm and an egg, with the male providing the sperm and the female providing the egg. This is an age-appropriate introduction to reproduction and is not intended to be an explicit explanation of the sexual process.

**3.8 The student will comprehend that the baby grows inside the mother's body for nine months and then is born.**

Descriptive Statement: The umbilical cord and placenta are introduced. Students also learn that at the end of nine months of development, the baby leaves the mother's body through the vagina or through a surgical process known as Caesarean section. The extent of the discussion of the birth process at this point is dependent upon the students and the topics that arise.

**3.9 The student will describe the types of behavior that enable him or her to gain friends or to lose friends.**

Descriptive Statement: Behavior that helps children make and keep friends includes: friendly attitudes, being aware of others' feelings, sharing, using appropriate language and behavior, and accepting the attitudes and feelings of others. Behavior that causes children to lose friends includes: verbal or physical aggression; embarrassing or criticizing the friend; excluding the friend from activities; and violations of the relationship, such as lying, gossiping, cheating, stealing, and breaking promises. Behavior in groups also is discussed with emphasis on the rights and responsibilities of being a member of a group. Positive mental health practices should be utilized when discussing behaviors.

**3.10 The student will practice safety rules in the home.**

Descriptive Statement: This involves following up on the safety/first-aid objectives for the third-grade health curriculum and focuses on telephone and door-answering safety when no adult is present. Parents are encouraged to discuss and develop safety precautions at home.

**3.11 The student will demonstrate to others how to respond appropriately to good touches and how to handle inappropriate approaches from relatives, neighbors, strangers, and others.**

Descriptive Statement: This is a continuing review of the elements of good and bad touches including responding appropriately both to good and to bad touches. When a good touch is welcomed by the child, he or she can respond by smiling, by returning a similar gesture, or by saying "thank you." Children also need continuing encouragement to tell a trusted adult in private about any inappropriate approaches. Other responses to inappropriate approaches include saying "no," getting away from the person quickly, telling the person that he or she does not like the touch, and telling a trusted adult about the inappropriate approach.

**3.12 The student will be conscious of how commercials use our emotions to make us want products.**

Descriptive Statement: Children review the concept of media influences. The students are given examples of techniques used by the media to create excitement and a desire to purchase products. Students will begin to understand how the media affects mental health issues such as self-image, alcohol, tobacco and other drug use.

## FOURTH GRADE

- 4.1 The student will be able to identify the human reproductive organs.**  
Descriptive Statement: Emphasis is placed on the male reproductive organs: penis, testicles, scrotum, and urethra; and on the female reproductive organs: uterus, ovaries, vagina, and fallopian tubes.
- 4.2 The student will identify physical changes that begin to occur during puberty.**  
Descriptive Statement: The individual differences in growth patterns associated with male and female sexual changes are presented. Male characteristics presented include: increased width of shoulders, increased length of arms and legs, the pituitary gland that controls physical growth through hormones, the appearance of pubic and auxiliary hair, and changes in the voice. Female characteristics presented include: increased width and roundness of hips, development of breasts, the pituitary gland that controls physical growth through hormones, the appearance of pubic and auxiliary hair, and the onset of the menstrual cycle. Emphasis is placed on the fact that the onset of sexual changes and growth patterns varies with individuals and that this is natural. Students are helped on an individual basis to avoid being fearful if they are slower to develop than their peers. The harmful effects of teenage pregnancy are discussed along with the importance of avoiding premarital sexual activity. In addition, the importance of cleanliness personal hygiene in relation to these bodily changes is discussed. When problems arise, teachers and parents are encouraged to continue working together in a team approach to problem solving.
- 4.3 The student will develop an awareness of human fertilization and prenatal development.**  
Descriptive Statement: Instruction includes the uniting of the sperm and the egg and the development of the fetus inside the uterus.
- 4.4 The student will identify basic human emotions and effective ways of dealing with them.**  
Descriptive Statement: Emphasis is placed on understanding and dealing with strong emotions, both positive and negative. Students learn how to deal with joy and exuberance, as well as those emotions resulting from loss, rejection, divorce, death, illness, and moving. The student learns to manage appropriate responses to these feelings and to avoid self-destructive or abusive behavior by using positive mental health practices.
- 4.5 The student will develop positive reactions to his or her strengths and weaknesses.**  
Descriptive Statement: This includes accepting personal responsibility for successes and failures, taking pride in successes, and understanding that mistakes can result in positive learning toward success next time.
- 4.6 The student will become aware of the need to assume responsibility within the family and to function effectively as a family member.**  
Descriptive Statement: The focus is on sharing tasks within the family and helping, supporting, and communicating with family members. Special attention is given to appropriate assistance and support for and communication with family members who have physical or mental disabilities. ~~handicapped family members.~~

- 4.7 The student will describe the factors surrounding child abuse and child neglect.**  
Descriptive Statement: The terms child abuse and child neglect (including sexual abuse) are explained, as well as how to protect oneself and the importance of confiding in a trusted adult such as a parent, teacher, minister, grandparent, or guardian.
- 4.8 The student will identify factors contributing to the use of drugs.**  
Descriptive Statement: Discussion includes the motivation for using alcohol, tobacco and other drugs, drugs and other substances a need to feel "grown up," a need for peer acceptance, a "high" from the temporary effects of drugs, and/or a relief from emotional ~~psychic~~ pain. Emphasis is placed on ways of dealing with one's needs and feelings without the use of drugs or other substances.
- 4.9 The student will recognize the dangers of substance abuse.**  
Descriptive Statement: The focus is on the misuse of tobacco, alcohol, and other drugs. Content includes the adverse effects of substance abuse on the individual and on the many contributing factors to family violence, sexual violence, and child abuse.

## FIFTH GRADE

- 5.1 The student will define the structure and function of the endocrine system.**  
Descriptive Statement: The basic parts of the endocrine system (pituitary gland and adrenal glands) and their functions are introduced.
- 5.2 The student will identify the human reproductive organs in relation to the total anatomy.**  
Descriptive Statement: Emphasis is placed on the male reproductive organs: penis, testicles, scrotum, and urethra; and on the female reproductive organs: uterus, ovaries, vagina, and fallopian tubes. The reproductive organs are explained in relation to total human anatomy.
- 5.3 The student will explain how human beings reproduce.**  
Descriptive Statement: Instruction includes the uniting of the sperm and the egg and the development of the unborn child inside the uterus. The development of the baby at different stages is illustrated. Emphasis is placed on the ~~need to avoid~~ consequences of premarital sexual activity. The importance of prenatal care is discussed also, as well as the profound effects of drugs on the mother and developing child.
- 5.4 The student will recognize the relationship between the physical changes that occur during puberty and the developing capacity for reproduction.**  
Descriptive Statement: Physical changes that occur during puberty are summarized. Topics included are nocturnal emissions and erections; menstruation; instability of emotions, such as mood swings during puberty; development of a positive attitude toward one's sexuality; and the relationship between changes during puberty and one's ability to conceive and bear children.
- 5.5 The student will realize the importance of nutrition for himself or herself and for pregnant women who need to eat nutritious foods and avoid dangerous substances while the baby is growing inside the uterus.**  
Descriptive Statement: This objective is incorporated into the nutrition component for the fifth-grade health curriculum.
- 5.6 The student will identify reasons for avoiding sexual activity prior to marriage.**  
Descriptive Statement: The psychological, social, and physical consequences of premarital sexual relations are discussed, as well as the benefits of postponing sexual intercourse until one is physically and emotionally mature and has a positive, committed marital relationship. The detrimental effects of premarital sex, including teenage pregnancy, infant mortality, and sexually transmitted diseases, are emphasized, as well as the impact on one's reputation, ~~and~~ self-esteem, and mental health.
- 5.7 The student will describe the effects of personal hygiene on one's self-concept.**  
Descriptive Statement: Discussion focuses on those bodily changes in puberty that require special attention to cleanliness and their relationship to a positive self-concept and acceptance from peers. Proper use of feminine hygiene products in relationship to cleanliness is included. ~~Toxic shock syndrome and its relation to cleanliness are included.~~

- 5.8 The student will recognize the importance of contributing to a constructive group activity.**  
Descriptive Statement: The teacher emphasizes the individual's contribution to accepting responsibility, how this relates to group success or failure, and how opportunities for leadership may be presented.
- 5.9 The student will develop an increased understanding of the roles, duties, and responsibilities of family members.**  
Descriptive Statement: The student can achieve this by defining the traditional and changing roles, duties, and responsibilities of family members; by preparing for the life-long adjustments required for his or her changing roles; and by describing the emotional interactions involved in being a family member. Non-traditional ~~career~~ roles of males and females are discussed, and options for the life-long goals of men and women are presented.
- 5.10 The student will examine the messages from mass media related to sexuality.**  
Descriptive Statement: Printed materials, advertising, television, wearing apparel, movies, and music are discussed in relation to gender stereotyping and to the avoidance of sexual exploitation and sexual violence. Students will understand how the media affects mental health issues related to sexuality.
- 5.11 The student will develop skill in saying "no" to any social behavior or activity that he or she perceives as wrong for him or herself.**  
Descriptive Statement: Discussion focuses on alternatives to situations such as rude behavior, smoking, alcohol or drug use, theft, vandalism, violence, and premarital sexual relationships.
- 5.12 The student will recognize threatening or uncomfortable situations and how to react to them.**  
Descriptive Statement: These situations may include walking alone, opening doors for strangers, experiencing sexual abuse or incest, receiving obscene telephone calls, and facing dangers found in shopping malls. Ways of protecting oneself and recognizing and reporting such threats are stressed. The point is made, however, that most life situations are not threatening.
- 5.13 The student will explain the effects of substance abuse on the body.**  
Descriptive Statement: Emphasis is placed on the adverse effects of alcohol, drugs, and tobacco on the body. This information is related to physical and emotional growth during adolescence, including sexual development; to fetal development; and to any adverse effects upon the family unit.
- 5.14 The student will become aware of the existence of sexually transmitted diseases.**  
Descriptive Statement: Factual information regarding the nature of sexually transmitted diseases, including human immuno-deficiency virus (HIV)/acquired immune deficiency syndrome (AIDS), is introduced. HIV/AIDS is explained as a deadly disease. Other diseases referred to include syphilis, gonorrhea, chlamydia, and genital herpes.

## SIXTH GRADE

- 6.1 The student will relate personal hygiene to the physical changes that occur during puberty.**  
Descriptive Statement: Changes during puberty are discussed in relation to the increased need for personal hygiene, for proper dental care, for frequent showering and shampooing, for the use of deodorants, for the use and disposal of pads and tampons, and for clean clothing.
- 6.2 The student will explain the effects of growth on development, attitudes and interests.**  
Descriptive Statement: The teacher provides opportunities for discussion of physical changes during puberty, group and nongroup relationships (~~cliques and loners~~), peer pressure, and boy/girl relationships. Emphasis is on the positive and normal aspects of differences among individuals.
- 6.3 The student will continue to identify physical and emotional changes that occur during puberty and their effects on growth and development.**  
Descriptive Statement: The following topics are discussed in relation to male and female changes during puberty: nocturnal emissions and erections; menstruation, masturbation; instability of emotions and ways of expressing these emotions appropriately; and approaches to developing a positive attitude toward one's sexuality.
- 6.4 The student will recall basic facts about sexually transmitted diseases.**  
Descriptive Statement: Factual information is presented regarding sexually transmitted diseases, including syphilis, gonorrhea, chlamydia, and genital herpes. Diseases of the genitalia common to adolescents who are not sexually transmitted are described so as to allay unnecessary fears (such as vaginitis, urethritis, etc.).
- 6.5 The student will be able to describe the etiology, effects, and transmission of the AIDS virus.**  
Descriptive Statement: Instruction includes factual information regarding the AIDS virus and its transmission. The medical profession should be involved in teaching this objective (and other health-related topics) to include the most up-to-date facts.
- 6.6 The student will summarize the process of human reproduction and the benefits of postponing premarital sexual activity.**  
Descriptive Statement: This is a review of the reproductive process and the advantages of delaying sexual involvement. The possible detrimental effects of premarital sexual activity for both males and females are emphasized. They include sexually transmitted diseases, unwanted pregnancy, infant mortality, and psychological (reputation, self-esteem, etc.), social, economic, mental and physical consequences.
- 6.7 The student will describe personal characteristics that can contribute to happiness for self and others.**  
Descriptive Statement: This includes self-discipline, self-esteem, independence, acceptance of reality, acceptance of others, tolerance, concern for the needs of ~~handicapped~~ disabled persons, loyalty, honesty, cooperation, diligence, respect for proper authority, and acceptance of responsibility for self in relation to others. The student will practice responding to situations using positive mental health practices.

- 6.8 The student will demonstrate increased understanding of child abuse and neglect, including emotional and sexual abuse.**  
Descriptive Statement: This is accomplished by defining the types of abuse and explaining the need to report such situations to a trusted adult such as a parent, teacher, minister, grandparent, or guardian. The teacher helps students identify resources for the reporting and treatment of child abuse, sexual and family violence.
- 6.9 The student will become aware of community healthcare and safety agencies and their functions.**  
Descriptive Statement: Instruction includes the availability of community agencies providing the following services: child abuse prevention; treatment of abuse victims; mental health counseling; teenage pregnancy prevention and counseling; family planning counseling; prenatal care; substance abuse prevention and treatment and support groups; suicide prevention; prevention and treatment of sexually transmitted diseases, including HIV/AIDS; other general and specialized medical services, including the role of the family physician, local health department or community service board; police department, fire department, and other safety services; and community services provided by religious organizations. Parents are encouraged to learn about these agencies and to use their services when needed.
- 6.10 The student will explain the effects of substance abuse on the individual, family, school, and society.**  
Descriptive Statement: The effects of alcohol, tobacco, and other drugs on the individual, family, school, and society are presented with emphasis on genetic risks and fetal development, the ~~nature of addictive personalities~~ progression of the addiction, drunken driving, physical and sexual abuse, mental health issues, family violence, and the hazards of "second-hand" smoking. Information on local community resources for obtaining help with these problems is included.
- 6.11 The student will evaluate the messages from mass media related to sexuality and gender stereotyping.**  
Descriptive Statement: Students progress from examining media messages in the fifth grade to evaluating messages from mass media related to sexuality and gender stereotyping in the sixth grade. The avoidance of sexual exploitation, sexual violence, sexual abuse and stereotyping is stressed. Students will understand how the media affects mental health issues related to sexuality.
- 6.12 The student will apply decision-making skills in solving specific problems and in determining the possible outcomes of his or her decisions.**  
Descriptive Statement: Instruction includes the steps in the decision-making process, problem solving, and assertive communication skills. Using positive mental health practices, ~~S~~students relate decision-making and problem-solving skills to actual adolescent problems--their own or situations presented in case problems. The effects of decisions on life-long goals are emphasized, and students predict the possible outcomes of decisions made. Career and other options available to men and women are stressed as choices and are identified in the decision-making process.

## SEVENTH GRADE

- 7.1 The student will identify his or her role and relationships within the family.**  
Descriptive Statement: Content includes identification of personal interactions; communication skills; ways of meeting emotional, physical, and intellectual needs; and the student's contribution to the family unit. Students learn the positive benefits of personal sacrifice to support family goals and needs when such a decision is indicated.
- 7.2 The student will recognize the physical development of his or her sex characteristics and how they affect emotional and social growth.**  
Descriptive Statement: Emphasis is placed on the biological and physiological changes of early adolescence. Attention is given to such secondary sex characteristics as body growth, genital changes, hormonal secretions, the onset of menstruation, and sex-response feelings. Instruction promotes self-awareness and alleviates anxiety through factual information regarding menstruation, spontaneous erections, nocturnal emissions, masturbation, and differences in growth rates and development.
- 7.3 The student will realize that physical affection is not all sexual, but that it also can be an expression of friendship, of celebration, or of a loving family.**  
Descriptive Statement: The student learns that appropriate expressions of affection are essential for emotional, physical, and psychological health. The student will recognize the difference between appropriate and inappropriate physical affection.
- 7.4 The student will recognize that sexual behaviors are conscious decisions; that it is important to say "no" to premarital and inappropriate sexual relationships; and that appropriate relationships are based on mutual respect, trust, and caring.**  
Descriptive Statement: Sexual feelings are interpreted as normal and to be expected, but not always to be manifested in behavior. Instruction includes explanation of the differences between needs and desires, assertive skills, problem solving or conflict resolution, and alternatives. Ways to say "no" to premarital sexual relations and ways that students can support each other in saying "no" are presented. Characteristics of abusive relationships, which may also involve alcohol and other drug abuse, are addressed. In addition, the ~~detrimental effects~~ consequences of teenage pregnancy, the nature of sexually transmitted diseases, and the benefits of delaying sexual activity until marriage are reviewed.
- 7.5 The student will identify messages in society related to sexuality.**  
Descriptive Statement: The teacher guides the student in discovering and analyzing messages about sexuality found in advertising media, music and videos, television, films, printed materials, and graffiti. Messages conveyed by adults also are addressed. Students learn to recognize gender stereotyping and sexual exploitation. They are encouraged to evaluate and counteract any negative effects identified and to engage in a variety of positive activities, rather than spending too much time viewing media programs containing negative components. Students will demonstrate how these messages effect mental health issues related to sexuality.

- 7.6 The student will be aware of the consequences of preteen and teenage sexual intercourse.**  
Descriptive Statement: Instruction focuses on updated, factual information regarding sexually transmitted diseases, including HIV/AIDS; pelvic inflammatory disease (PID); cervical cancer; unwanted pregnancy; and discussion about reputation, guilt, and anxiety. Discussion also includes the emotional, psychological and financial implications of sexual activity and parenting before marriage. Students are guided in identifying positive aspects about themselves as reasons for avoiding risk-taking behavior. They learn also about the positive results and freedoms associated with abstinence during the preteen and teenage years.
- 7.7 The student will list the adverse consequences of a pregnancy in early adolescence, as well as the positive benefits of postponing pregnancy until marriage.**  
Descriptive Statement: Instruction includes a review of pregnancy and childbirth from previous grade levels, as well as discussion of responsibilities involved and adverse consequences encompassing the emotional, mental, physical, social, and economic impact on young parents, on their families, and on society. The nutritional implications of high-risk infants and teenage mothers also are included. The effects of an adolescent pregnancy on the student's life-long goals and potential achievements are emphasized. ~~particularly in view of the many personal and career options available to women.~~
- 7.8 The student will describe the signs and symptoms of pregnancy.**  
Descriptive Statement: Instruction involves physical and psychological changes and the need for early detection of pregnancy through medical testing to ensure a healthy and successful pregnancy. Community resources for testing and/or further information are identified.
- 7.9 The student will develop an understanding of and responsibility for family planning.**  
Descriptive Statement: Content includes reasons for family planning, factors to be considered when planning a family, the role of the family physician, community resources, and methods of contraception.
- 7.10 The student will explain techniques for preventing and reporting sexual assault and molestation.**  
Descriptive Statement: Methods of handling assault and molestation, as well as prevention methods, are presented. Emphasis is placed on the importance of avoiding situations which could provide opportunities for molestation and sexual assault, including the homes and cars of acquaintances when no appropriate supervision is available. Key terms are defined. Approaches and behaviors used by ~~molesters~~ perpetrators are identified and explained. Community resources for victims of molestation and assault are identified.
- 7.11 The student will identify causes, symptoms, treatment, prevention, and transmission of sexually transmitted diseases, including AIDS.**  
Descriptive Statement: Topics include the nature, symptoms, treatment, transmission, and diagnosis of the following diseases in addition to HIV/AIDS: syphilis, gonorrhea, chlamydia, and genital herpes. In addition, myths are dispelled; for example students learn that one cannot contract a sexually transmitted disease from dirty dishes or clothing. High-risk activities, such as needle sharing, intravenous drug abuse, are discussed. Community resources for the testing and treatment of sexually transmitted diseases are identified.

- 7.12 The student will identify the issues associated with friendships.**  
Descriptive Statement: The student accomplishes this by identifying characteristics of each type of friendship and by relating these characteristics to changes as one advances through the growth and development process. The student will identify the characteristics of healthy and unhealthy friendships and other relationships.
- 7.13 The student will realize the role of peers and the peer group during adolescence, and the nature and purpose of dating.**  
Descriptive Statement: Discussion focuses on the qualities of friendship, the importance of participating in peer groups that encourage the development of positive personal traits, and the nature of dating. Group dating is presented as a positive first step in developing romantic relationships, demonstrating appropriate and inappropriate dating behavior, utilizing positive mental health practices and fulfilling dating responsibilities.
- 7.14 The student will recognize contributions of various racial and ethnic groups to family life and society.**  
Descriptive Statement: Topics include the importance of racial and ethnic identity for families and the effects of negative stereotypes on families and individuals. Emphasis is placed on appreciation of racial and ethnic differences.
- 7.15 The student will increase his or her ability to listen to different points of view and to accept the rights of others to a differing point of view.**  
Descriptive Statement: Positive communication skills are developed to enhance relationships and to increase recognition of various points of view existing within families and society.

## EIGHTH GRADE

**8.1 The student will relate stages of human development to his or her own developmental level.**

Descriptive Statement: The student learns that people change as they age, according to their developmental level--physically, mentally, and emotionally. Physical development and human anatomy are reviewed. Stages of mental and emotional development are presented in relation to the student's present developmental level with the goal of increasing his or her self-understanding and self-acceptance--now and in the future. Commonly accepted theories of personal development are presented as they relate to the student's own development.

**8.2 The student will recognize the development of sexuality as an aspect of the total personality.**

Descriptive Statement: The primary factor to be presented is the development of one's own sexual identity.

**8.3 The student will become aware of the need to think through decisions and to take responsibility for them.**

Descriptive Statement: The impact of present decisions on future opportunities and personal development is stressed. Instruction also includes support skills for the decision-making process--assertive communication, identification of personal conflicts, positive mental health practices, and conflict resolution. Life-long educational, career, and personal development goals are examined in relation to present decisions and to options available to males and females at various stages of their lives.

**8.4 The student will identify the issues associated with friendships.**

Descriptive Statement: The student accomplishes this by reviewing the characteristics of appropriate and inappropriate friendships, by discussing the qualities of a good friend, and by relating the characteristics to changes as one continues to advance through the growth and development process.

**8.5 The student will recognize the nature of dating during adolescence.**

Descriptive Statement: Content includes the need for belonging, love, and affection, and the search for one's own identity. In addition, students examine the difference between love and infatuation and become aware that one learns about oneself from every relationship. The student will also recognize warning signs for potentially abusive dating relationships and negative mental health practices.

**8.6 The student will interpret the messages in society related to sexuality.**

Descriptive Statement: Students continue to discover and analyze messages about sexuality found in advertising media, music and videos, television, films, printed materials, and graffiti. Students also determine the impact of these messages on themselves and others and review how to counteract negative effects. Positive alternatives to media immersion are discussed. Students will demonstrate how these messages affect mental health issues related to sexuality.

**8.7 The student will describe strategies for saying "no" to premarital sexual relations.**

Descriptive Statements: The emphasis is on strengthening self-confidence and reinforcing assertive skills and decision-making skills. Students learn why and how to say "no" to

premarital sexual relations and to situations that challenge their own values, how to manage peer pressure, and how to manage their own sexual feelings.

**8.8 The student will develop the coping skills needed to deal with stress.**

Descriptive Statement: Students identify possible sources of stress (for example, parental, peer, and school pressures; teenage pregnancy; and fear of HIV/AIDS); and the positive and negative ways in which individuals deal with these sources of stress. The point is made, however, that stress cannot be avoided and that it is not all negative. Information is provided to counteract negative approaches to dealing with stress, such as alcohol, drugs, and suicide. Students learn positive physical and mental techniques for coping with stress (for example, exercise and sports, creative arts, religious activities and youth groups, and career-development and life-management activities).

**8.9 The student will identify the stresses related to changing relationships in the home, school, and community.**

Descriptive Statement: Emphasis is placed on the grief and adjustment processes associated with loss or change resulting from such circumstances as illness, a disabling condition, death, separation, divorce, loss of friendship, loss of income, or coping with substance abuse. The point is made, however, that changes may bring new opportunities to form friendships and to engage in new activities; that some relationships contain normal amounts of stress, especially in adolescents; and that stress is usually only temporary. The student will utilize positive mental health practices in stress management.

**8.10 The student will analyze the issues related to teenage pregnancy.**

Descriptive Statement: ~~Issues such as the role of the teenage father and the adverse impact of pregnancy on both families are identified.~~ The physical, social, emotional, legal, financial, educational, psychological and nutritional implications of teenage pregnancy ~~also~~ are discussed. The roles of and impact on the teenage mother and father are identified.

**8.11 The student will review facts about pregnancy prevention and disease control.**

Descriptive Statement: Methods of contraception are analyzed in terms of their effectiveness in preventing pregnancy and the spread of disease. Abstinence is emphasized as the only method that is 100% effective in preventing pregnancy and the most effective method of minimizing the possibility of contracting sexually transmitted diseases.

**8.12 The student will describe the effects of alcohol and drug abuse on families and peer relationships.**

Descriptive Statement: The effects of substance abuse on judgment within the peer group in terms of social and sexual behavior are analyzed. The effects of such abuse within the family also are emphasized, including family and sexual violence.

**8.13 The student will identify the effects and prevention of sexual assault, rape (including "date rape"), incestuous behavior, and molestation.**

Descriptive Statement: Content includes developing assertive skills, resolving conflict, avoiding risk situations and provocative behavior and dress, saying "no," and identifying other alternatives. Characteristics of dating violence and abusive relationships will be discussed. Information on referral services also is provided.

**8.14 The student will recall the ways in which the AIDS virus is transmitted, and techniques for preventing this disease.**

Descriptive Statement: This involves describing behaviors, including homosexuality, that put one at risk; dispelling myths regarding the transmission of the infection disease; and stressing abstinence and rejection of the use of illegal, intravenous drugs. The use of condoms in preventing the spread of HIV/AIDS is discussed.

## NINTH GRADE

- 9.1 The student will trace the human growth cycle in relation to parenting skills from the prenatal period through the elderly stage.**  
Descriptive Statement: Information about developmental levels throughout the life cycle-- prenatal, infant, toddler, pre-kindergarten, school-age, adolescent, young adult, middle-age, and elderly--is related to the complexity of child-rearing and to the need for maturity before parenthood. Life-stage development is also presented to help students gain appreciation of their own development.
- 9.2 The student will explain the importance of the family as a basic unit of society and his or her responsibility as a member of the family.**  
Descriptive Statement: Topics include the function of the family, family forms, family strengths, and family influences on society.
- 9.3 The student will recognize the development of sexuality as an aspect of the total personality.**  
Descriptive Statement: Discussion focuses on the development of one's sexual identity. Internal and external conflicts associated with problems of sexual identity are addressed.
- 9.4 The student will review and apply the decision-making process.**  
Descriptive Statement: Students practice methods of gathering information and applying the decision-making process in practical situations. Emphasis is placed on the need for parental guidance, family and personal values, knowledge, positive mental health practices, and reason as bases for decision-making.
- 9.5 The student will review the nature and purposes of dating.**  
Descriptive Statement: Topics include understanding family guidelines, the functions of dating, and coping with the pressures experienced in dating situations. Students will discuss the signs of dating violence and physically and mentally abusive relationships. Discussion also focuses on the importance of group dating, rather than dating as a couple, in early adolescence.
- 9.6 The student will realize the importance of setting standards for controlling sexual behavior and of postponing sexual relations until marriage.**  
Descriptive Statement: The physical, emotional, social, psychological and economic consequences of premarital sexual relations continue to be emphasized along with reinforcement of assertive skills and ways to say "no" in terms that will enable the student to resist pressure from other teenagers and manage his or her own feelings and behavior.
- 9.7 The student will interpret the effects and prevention of sexual assault, rape (including "date rape"), incestuous behavior, and molestation.**  
Descriptive Statement: This is a review of the use of assertive skills, conflict resolution, avoidance of risk situations, and referral services in the community. In addition to identifying such factors, the student explains or interprets them to others. The student will demonstrate proper approaches to dealing with physically and mentally abusive relationships.

- 9.8 The student will relate specific information on substance abuse to each stage of the life cycle.**  
Descriptive Statement: Emphasis is on substance use and abuse during pregnancy, puberty, and adolescence and its general effect on daily functioning.
- 9.9 The student will be able to explain the process of reproduction.**  
Descriptive Statement: Instructional components include anatomy, physiology, conception, fertility, fetal development, childbirth, and prenatal care.
- 9.10 The student will demonstrate understanding of specific health issues, including the ability to conduct particular self-examinations.**  
Descriptive Statement: The focus is on factual information about menstruation, proper use of feminine hygiene products in relationship to cleanliness ~~toxic shock syndrome~~, pre-menstrual syndrome, menopause, and male- and female-specific concerns. Disease prevention through self-assessment and self-examination is reinforced with emphasis on breast and testicular self-examination.
- 9.11 The student will demonstrate knowledge of pregnancy prevention and disease control.**  
Descriptive Statement: Topics include planning for adult relationships, a review of factors to consider in planning for a family, misconceptions about contraception, a review of methods of contraception in relation to effectiveness in pregnancy prevention and disease control, and the decisions associated with contraception. Abortion is not presented as a method of birth control, but spontaneous abortion or miscarriage is explained and the risks of induced abortion are analyzed.
- 9.12 The student will explain the transmission and prevention of the AIDS virus.**  
Descriptive Statement: This is a review of the ways in which ~~the AIDS~~ HIV virus is transmitted and the techniques for preventing this disease.
- 9.13 The student will identify the effects of discrimination.**  
Descriptive Statement: The teacher helps students identify forms of discrimination including ageism, racism, and sexism and the consequences of discrimination on individual and family life. Discussion focuses on the value and importance of differences among individuals and families. The effects of discrimination on a person's mental health will also be discussed.
- 9.14 The student will begin to identify educational and career goals.**  
Descriptive Statement: Students formulate educational and career objectives. A "life goals" project provides the structure for achieving this objective and students complete activities that enable them to gain insight into the variety of personal and career options available to males and females.

## TENTH GRADE

- 10.1 The student will determine how maturation affects adolescents.**  
Descriptive Statement: Emphasis is placed on the process of adolescent development as it relates to self-image, self-esteem, physiological changes, identification of human needs, constructive responses to emotions, positive mental health practices, the decision-making process, sources of values, and self-discipline.
- 10.2 The student will describe his or her own attitudes concerning expectations of self and interpersonal relationships.**  
Descriptive Statement: Appropriate friendships, dating or group activities, stages of developing relationships, assertiveness, types of love, communication, and individual and family roles are stressed.
- 10.3 The student will examine values, morals, and ethics essential to the growth and maintenance of positive human relationships.**  
Descriptive Statement: The universal values of honesty, trustworthiness, self-control, responsibility for self and others, and social justice are discussed as well as the development of moral and ethical systems.
- 10.4 The student will use the steps in the decision-making process to solve specific problems.**  
Descriptive Statement: Instruction deals with the six steps of the decision-making process as they relate to personal, social, and peer pressures and to media messages. These steps include: identifying the problem; listing all possible alternatives; evaluating the alternatives and their consequences based on personal and familial beliefs as well as societal values; choosing an alternative that promotes the good in self, others, and society; acting on the decision; and evaluating the results. Resources in the community that can assist in evaluating alternatives are identified.
- 10.5 The student will recognize the need to abstain from premarital sexual intercourse.**  
Descriptive Statement: Content focuses on the need to consider life-long goals in relation to pressures for present sexual activity. Topics include readiness for parenthood, the consequences of non-marital pregnancy, the effects of sexually transmitted diseases, the impact on reputation, mental health and on present and future goals, the importance of adhering to family values, the need to complete educational plans, the burdens of financial responsibilities, and interference with future goals and job opportunities. The positive benefits of postponing sexual activity until marriage are emphasized. Students will identify personal, educational and career goals and the impact an unplanned pregnancy or sexually transmitted infection would have on these goals. ~~—especially the opportunities available to young men and women who concentrate on attaining their personal, educational, and career goals.~~ In addition, abstinence continues to be emphasized as the only method that is 100% effective in preventing pregnancy.
- 10.6 The student will recognize alternatives to premarital sexual intercourse for expressing feelings and affection.**  
Descriptive Statement: Students are guided toward communicating feelings and affection through talking; through expressing ideas, values, and goals; through social and recreational contacts and community service; and through positive body language, ~~and~~ caring gestures, and other positive mental health practices, rather than through premarital sexual intercourse.

- 10.7 The student will explain the factors to be considered in preparing for dating and marriage.**  
Descriptive Statement: Steps involved in relationships are identified, including friendships; dating (casual, double/group, single, blind, steady, and leading to marriage); and mate selection. Steps to developing positive, healthy relationships will also be discussed.
- 10.8 The student will examine factors to be considered in life-goal planning.**  
Descriptive Statement: Discussion includes life-long career goals in relation to economics and continuing education, considering the possibilities of marriage and preparing for a family, and/or career development plans. Family planning, including methods of contraception, is reviewed.
- 10.9 The student will describe the signs and symptoms of pregnancy.**  
Descriptive Statement: Instruction involves physical and psychological changes and the need for early detection of pregnancy through medical testing to ensure a healthy and successful pregnancy. Community resources for testing and/or further information are identified.
- 10.10 The student will analyze the factors associated with a healthy pregnancy.**  
Descriptive Statement: Content focuses on causes of low birth weight such as smoking, poor nutrition, and use of alcohol and other drugs, as well as the effects of sexually transmitted diseases, including HIV/AIDS. Other consequences of good and poor health habits, including the importance of quality prenatal care, are stressed.
- 10.11 The student will explain the importance of supportive roles of the mother and father through pregnancy and birth.**  
Descriptive Statement: Topics for discussion include the responsibilities of each parent in relation to proper prenatal care; the effects of heredity; possible abnormal outcomes such as miscarriage, birth defects, still-birth, and premature birth; and the stages of fetal development prior to birth.
- 10.12 The student will describe available birthing options.**  
Descriptive Statement: Prepared materials on childbirth education are primary resources. Birthing alternatives, such as natural childbirth, are examined.
- 10.13 The student will identify the stages of the birthing process.**  
Descriptive Statement: The stages of the birthing process include the onset of the process and the three stages of labor and delivery--dilation, birth, and expulsion of placenta.
- 10.14 The student will analyze the skills and attitudes needed to become a competent parent.**  
Descriptive Statement: Attitudes toward parenting styles are examined. Instruction also includes various parenting strategies described by authorities. Students have opportunities to identify parenting skills they wish to develop. Students will understand the importance of the parenting responsibilities of both the mother and father. The student will be able to identify community and familial support systems that are available to parents. Students will understand the positive and negative effects of parenthood on mental health.

**10.15 The student will describe adjustments to be made after the birth of a child.**

Descriptive Statement: The newborn child as a source of joy and love is emphasized; however, the impact on the family of caring for a newborn infant is examined, including the effects on income, educational plans, leisure time, time available for sleep, and interpersonal relationships.

**10.16 The student will compile a list of community agencies and resources available to assist individuals and families.**

Descriptive Statement: Examples of community resources to be listed are mental health services, social services, religious organizations, private agencies, hot lines such as violence prevention, child abuse, sexual violence and suicide, day-care centers, nursing homes, and the department of health.

**10.17 The student will review the positive aspects of family life as a basic unit of society and as a means of personal development.**

Descriptive Statement: Instruction includes a review of family functions and forms, with particular emphasis on family interactions. The family unit is described as a primary factor for the development of one's personality and for preparation for adulthood as either a married or a single person. The relationship of the family unit to the community and the world is stressed.

## ELEVENTH GRADE

- 11.1 The student will evaluate individual strengths and weaknesses in relation to personal, educational, and career goals.**  
Descriptive Statement: Students are guided through a realistic self-assessment including working toward personal improvement, setting short- and long-term goals, formulating action plans, establishing priorities, and using school and community resources. Emphasis is placed on the variety of choices available to young women and the need for sound decision making.
- 11.2 The student will relate major theories of human development to his or her own situation and/or developmental level.**  
Descriptive Statement: A review of the major theories of personal developmental stages is followed by analysis of each stage as it relates to the student's own development. Students are made aware that these are theories, that they are not all inclusive, and that they may or may not relate to the student's individual life.
- 11.3 The student will recognize advantages of abstinence from premarital sexual relations, reinforcing methods of saying "no" to undesirable behavior.**  
Descriptive Statement: The physical, emotional, social, psychological, and economic consequences of premarital sexual relations continue to be stressed, and students progress in development of assertive skills, including methods of saying "no" in ways that enable them to resist pressure from other teenagers and manage their own feelings and behavior.
- 11.4 The student will explain how television can have both positive and negative effects on the development to individuals--children, adolescents, and adults.**  
Descriptive Statement: Content includes types of messages conveyed on television; techniques for analyzing television programs and commercials; and strategies for evaluating television offerings according to their potential to entertain, to educate, to reinforce concepts, to guide or misguide behavior, and to promote violence. Students will demonstrate how these messages affect mental health issues.
- 11.5 The student will express his or her own attitude toward parenting.**  
Descriptive Statement: This centers on the student's own opinions about parenthood--possible reasons for becoming a parent, realistic role expectations for parenthood, and parental responsibilities. It also includes discussion of the responsibilities of parents who have children with characteristics that may be displeasing to the parent(s). Students will demonstrate the skills needed to utilize positive mental health practices in parenthood.
- 11.6 The student will develop skills in making parenting decisions.**  
Descriptive Statement: Students explore the relationship between personal and family development and planning for parenthood. They analyze the factors to be considered in family planning, such as education, career development, finances, and maturity.
- 11.7 The student will classify the major problems, issues, and decisions related to each stage of the family life cycle.**  
Descriptive Statement: The life cycle and how it applies to individuals and families is covered along with developmental tasks and needs of individual family members.

- 11.8 The student will identify parenthood options in terms of questions to be answered and decisions to be made.**  
Descriptive Statement: Discussion includes readiness to be a parent; family planning issues and spacing of children; choices resulting from infertility, genetic factors, and birth defects; and expenses associated with parenthood. Discussion also includes the positive aspects of parenting for the individual and for society.
- 11.9 The student will describe characteristics of newborn infants.**  
Descriptive Statement: Characteristics include physical appearance, medical tests to assess normalcy, observable infant behavior, emotional and physical needs of the child, and decisions related to circumcision.
- 11.10 The student will recall ways to cope with common fears and concerns regarding the care of newborn infants.**  
Descriptive Statement: The emphasis is on parent-child relationships, such as bonding, special care requirements, feeding schedules, stress, Sudden Infant Death Syndrome (SIDS), sleep patterns, colic, smothering, apnea, medications, illness, and breast and bottle feeding. Positive and negative effects of parenthood on mental health will be discussed.
- 11.11 The student will describe the adjustments family members face in the postnatal period.**  
Descriptive Statement: Adjustments to be considered include how the baby's needs affect other family members and their schedules. Consideration is given to the expectations of relatives and to adult needs for privacy, recreation, and time with other children. The issue of sibling rivalry is also discussed.
- 11.12 The student will explain the stages of growth and development in children.**  
Descriptive Statement: Topics included are the growth patterns of children, behavior patterns to be expected as children develop, and appropriate parent responses in reacting to and in guiding children's behavior.
- 11.13 The student will calculate the personal considerations and financial costs of childbearing.**  
Descriptive Statement: This includes the following considerations: the economic costs of raising a child, including the expenses of medical care before and after pregnancy; the costs of educating a child; the social considerations, including the investment of time and energy needed for quality child care; and the opportunity considerations, such as staying home to care for a child rather than pursuing an education or a career. This is balanced with discussion regarding the rewards of having children.
- 11.14 The student will identify criteria for selecting adequate child-care services.**  
Descriptive Statement: This is achieved by guiding the student in identifying child-care alternatives and in establishing guidelines for selecting appropriate care, considering pre-school education, after-school day care, the problems of children in self-care ("latchkey") situations, and the need for quality and quantity of time in maintaining the physical and mental well-being of the child.

**11.15 The student will analyze community resources to meet specific needs.**

Descriptive Statement: This analysis focuses on community healthcare resources, employee benefits and programs, support agencies and services, sources of educational information about child care and parenting, and family planning resources.

## TWELFTH GRADE

**12.1 The student will describe the value of the home and family as primary sources of enrichment and personal renewal.**

Descriptive Statement: Content focuses on the importance of home and family as a support system, as a nurturing influence in developing values and attitudes, and as an example or role model for the student's future home and lifestyle.

**12.2 The student will analyze the effects of cultural and family patterns on individual and family development.**

Descriptive Statement: Topics such as kinship, family cultural background and customs, family religious traditions, and the changing family in today's society are analyzed.

**12.3 The student will describe types of adjustments and sources of conflict in interpersonal relationships.**

Descriptive Statement: Students learn that adjustments in relationships are to be expected and are not all bad. Instruction also includes common problems, commitment to the relationship, communication skills, decision-making strategies, compromise, positive mental health practices and other methods of conflict resolution.

**12.4 The student will explain how parental responsibilities change throughout the family life cycle.**

Descriptive Statement: The following topics are reviewed: the family life cycle; family structures; cultural and religious influences on parental behavior; psychosocial developmental stages; the developmental tasks of parents and children through the life cycle; strategies for parenting; nutritional needs of family members throughout the life cycle; family roles and responsibilities at various stages; and conflict resolution.

**12.5 The student will recognize problems of individuals with handicapping conditions and ways in which families can be sensitive to and make adjustments for these needs.**

Descriptive Statement: The emphasis is on managing and coping with the mental, emotional and financial stress brought on by the special needs of individual family members with such conditions as chronic illness, physical, mental and emotional handicaps, and learning disabilities. The use of community resources, educational institutions, and personal skills is included.

**12.6 The student will develop a plan for managing resources in the home.**

Descriptive Statement: This involves developing a household budget that achieves family goals. Time and energy management and the role of personal skills also are discussed.

**12.7 The student will interpret state laws that affect family life.**

Descriptive Statement: Current laws in Virginia are reviewed as well as any pending legislation affecting individuals and families regarding marriage, divorce, adoption, mental health, child abuse, sexual abuse and assault, and legal responsibilities of parents.

- 12.8 The student will identify ways of preventing and/or coping with various types of violence.**  
Descriptive Statement: Content includes issues associated with dating violence, spouse abuse, sexual assault, physical and verbal child abuse, family violence, and abuse of the elderly and disabled; violence prevention strategies, and identification of local support groups and agencies. Emphasis is placed on abuse as an unacceptable form of behavior that should not be tolerated. The need to report violence to appropriate authorities and agencies is presented as well as methods of reporting. Students will demonstrate the ability to seek mental health services as needed when coping with violence.
- 12.9 The student will analyze stress and crisis situations which affect family life.**  
Descriptive Statement: Stress situations and crises in the family are emphasized, particularly parental crises, death and dying, substance abuse, the termination of a marriage, role changes, job conflicts, loss of income, and serious illness. Students learn ways to prevent and manage such situations and crises and to ensure that the final outcome is positive. Students will demonstrate the ability to seek mental health services as needed when coping with violence.
- 12.10 The student will identify procedures and criteria for assessing community resources that deal with individual and family problems.**  
Descriptive Statement: Students learn how to locate community resources and how to evaluate them in selecting appropriate assistance with individual and family problems.
- 12.11 The student will interpret rationale for saying "no" to premarital sexual activity.**  
Descriptive Statement: The student progresses in assertive skills associated with saying "no" and knows the physical, emotional, social, psychological and economic implications of premarital sexual relations.
- 12.12 The student will prepare a plan for the fulfillment of life-long goals.**  
Descriptive Statement: Each student develops a plan designed to achieve the goals previously identified and based on the self-assessment activity in the eleventh grade. The plan includes strategies for attaining personal, educational, and career goals. The student continues to be made aware of the variety of opportunities and choices available.

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**GUIDELINES FOR TRAINING  
INDIVIDUALS WHO WILL BE TEACHING  
FAMILY LIFE EDUCATION**

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## **GUIDELINES FOR TRAINING INDIVIDUALS WHO WILL BE TEACHING FAMILY LIFE EDUCATION**

### **INTRODUCTION**

Individuals who teach Family Life Education (FLE) must be trained in its content, teaching strategies, use of instructional materials, assessment methods, and ways to involve parents. To ensure consistency in dealing with sensitive content and issues, a comprehensive and systematic training program is essential. The training program uses a combination of workshops and technology. The Board of Education shall establish requirements for appropriate training for teachers of FLE, which shall include training in instructional elements to support the various curriculum components. All individuals teaching FLE should participate in the state training program and follow-up activities in the region or local school division.

### **TRAINING PROGRAM**

The Department of Education sponsored, in 1988 through 1990, a series of regional and statewide FLE training sessions and teleconferences for the divisions' FLE contact persons, grade level leaders, and teachers. The school division contact persons and grade-level leaders were responsible for determining if the program was properly implemented.

In following years, FLE in-service and staff development workshops were offered from the Department of Education on an "as requested basis." During 1996, Virginia Commonwealth University's Division of Health and Physical Education conducted a survey of local FLE staff development needs. Data were requested from five representatives in each school division (the division-level FLE contact person; an administrator or teacher from the elementary, middle, and high schools; and the special education director). The survey indicated the need for ongoing, consistent, and skill appropriate staff development opportunities on 21 specific topics. Over a two-year period, two advisory groups (including representatives of the Virginia Congress of Parents and Teachers, the Virginia Department of Health, central office administrators, teachers, higher education educators, and adolescents) provided input in developing an ongoing staff development plan partially implemented in 1997 and fully implemented in 2002.

The current FLE staff development plan is primarily funded through federal funds from the Centers for Disease Control and Prevention, Division of Adolescent and School Health. Additional funds sometimes are provided through ~~the U.S. Department of Education, Safe and Drug-free School Programs and~~ the Virginia Department of Health. The staff development plan includes the use of 14 training modules (in manual format) to address most of the 21 requested topics, a continual broad scope and multiple-level review process, piloting of newly developed draft modules, evaluation of each module,

and revisions of the training manuals. The plan also includes a multiple-level training-of-trainers program where qualified educators are identified to provide staff development workshops to FLE teachers, other classroom teachers (including special education), instructional specialists, administrators, nurses, counselors, social workers, parents, community-based educators, and related positions. Some trainers are identified as statewide mentor trainers and others are identified as local facilitators.

The theory-based, skills-based staff developed workshops are offered during statewide summer training sessions and at regional or local sites during the school year on an “as requested basis.” Each training session is evaluated. Results of the evaluation are used to revise training manuals and instructional procedures for adults.

## **SUMMARY**

This design provides for consistency in training personnel and implementing the FLE program. The provision for support and follow-up is based on research findings which indicate that without effective training and follow-up activities it is less likely that individuals will practice what they have been trained. The evaluation will be designed to determine, on a continuing basis, if teachers or community-based educators that work with youth use information or skills learned in their classes with children and youth. This approach to evaluation should provide useful information about the success of the program, both immediate and long-term.

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**GUIDELINES FOR  
PARENT/COMMUNITY INVOLVEMENT**

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## **GUIDELINES FOR PARENT/COMMUNITY INVOLVEMENT**

### **INTRODUCTION**

An important element in the successful implementation of a Family Life Education program is parent/community involvement. A theme that runs throughout the program is the parent/teacher team approach to Family Life Education. Because of the sensitive nature of program content, a planned approach to parent/community involvement is critical.

### **PLAN FOR PARENT/COMMUNITY INVOLVEMENT**

In each school division that offers Family Life Education, the superintendent will identify a community involvement team, or use the school health advisory board, which should include individuals such as central office personnel, an elementary school principal, a middle school principal, a high school principal, teachers, a school board member, parents, one or more members of the clergy, a member of the medical and mental health profession, which may include a substance abuse prevention or treatment practitioner, and others in the community.

Parents and community-based personnel are encouraged to participate in statewide and local training sessions for Family Life Education.

The community involvement team or school health advisory board members will work with others in their localities to offer an ongoing plan to explain the Family Life Education program and to solicit support and involvement in its implementation.

### **PARENT INVOLVEMENT ACTIVITIES**

Department of Education staff members provide workshops and training sessions on Family Life Education and related topics at the state leadership conference and in localities as requested, ~~and the annual convention of the Virginia Congress of Parents and Teachers (Virginia PTA)~~. Parents participate on the statewide HIV/STD Resources Review Panel and on other planning committees as formed. One of the current 14 training modules addresses *Parental Involvement in Family Life Education*. School and community-based personnel as well as other parents are encouraged to participate in workshops that outline the key components of Family Life Education and the role of parents in the program.

Each teacher of Family Life Education is asked to meet with parents of students involved in the program. Provision should be in place for an ongoing review of local curriculum and instructional materials before they are used in the classroom. It is recommended that a resource center containing Family Life Education materials that may be checked out by parents is available in every school.

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# Board of Education Agenda Item

Item: J.

Date: September 25, 2008

Topic: First Review of the Standards of Quality

Presenter: Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications

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## Origin:

Topic presented for information only (no board action required)

Board review required by  
 State or federal law or regulation  
 Board of Education regulation  
 Other: \_\_\_\_\_

Action requested at this meeting  Action requested at future meeting: November 20, 2008

## Previous Review/Action:

No previous board review/action  
 Previous review/action  
date \_\_\_\_\_  
action \_\_\_\_\_

**Background Information:** Article VIII, § 2 of the *Constitution of Virginia* requires the Board of Education to determine and prescribe Standards of Quality for the public schools in Virginia. The *Constitution* says:

“Standards of quality for the several school divisions shall be determined and prescribed from time to time by the Board of Education, subject to revision only by the General Assembly. The General Assembly shall determine the manner in which funds are to be provided for the cost of maintaining an educational program meeting the prescribed standards of quality, and shall provide for the apportionment of the cost of such program between the Commonwealth and the local units of government comprising such school divisions. Each unit of local government shall provide its portion of such cost by local taxes or from other available funds.”

The *Code of Virginia* requires the Board of Education to review the Standards of Quality every two years. Section 22.1-18.01 of the *Code* says, in part:

“To ensure the integrity of the standards of quality, the Board of Education shall, in even-numbered years, exercise its constitutional authority to determine and prescribe the standards, subject to revision only by the General Assembly, by reviewing the standards and either (i) proposing amendments to the standards or (ii) making a determination that no changes are necessary....”

The *Code* also requires that the Board’s annual report to the Governor and General Assembly include any recommendations for revisions to the Standards of Quality. Section 22.1-18 of the *Code* says, in part:

“...the Board of Education shall submit to the Governor and the General Assembly a report on the condition and needs of public education in the Commonwealth and shall identify any school divisions and the specific schools therein which have failed to establish and maintain schools meeting the existing prescribed standards of quality. Such standards of quality shall be subject to revision only by the General Assembly, pursuant to Article VIII, Section 2 of the Constitution of Virginia. Such report shall include a complete listing of the current standards of quality for the Commonwealth's public schools, together with a justification for each particular standard, how long each such standard has been in its current form, and whether the Board recommends any change or addition to the standards of quality.”

On August 7, 1971, the Board of Education adopted the first Standards of Quality (SOQ). They were revised by the General Assembly in 1972 and adopted as uncodified Acts of Assembly. In 1974, they were revised into eight standards. In 1984, they were codified by the General Assembly, and in 1988 they were arranged into their current format.

The Board of Education revised its bylaws in October 2001 to require the Board to “determine the need for a review of the SOQ from time to time but no less than once every two years. The Standing Committee on the Standards of Quality was created by resolution of the Board of Education in November 2001 and held its first meeting in January 2002.

The Board has made recommendations to the Governor and the General Assembly, or has reaffirmed previous recommendations to the Governor and the General Assembly, on June 25, 2003, November 17, 2004, October 26, 2005, November 29, 2006, and November 29, 2007.

**Summary of Major Elements:** The proposed resolution would reaffirm the Board’s commitment to the seven staffing recommendations that have not yet been funded while recognizing the budget constraints facing the Governor and General Assembly during the 2009 Session. The proposed resolution would ask that consideration of these additional staffing recommendations be made when the revenue picture has improved.

Furthermore, in the event that funding for K-12 public education must be reduced as a result of declining revenues, the Board would urge the Governor and the General Assembly to give local school boards flexibility in meeting the staffing requirements in the Standards of Quality while maintaining accountability requirements in the Standards of Learning program.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board accept the proposed resolution for first review.

**Impact on Resources:** The impact on state funds for the review of the Standards of Quality is expected to be minimal and can be absorbed within current resources.

**Timetable for Further Review/Action:** This item will be presented to the Board of Education for final review on November 20, 2008.

**EXPRESSING THE SENSE OF THE BOARD OF EDUCATION  
ON FUNDING THE STANDARDS OF QUALITY:  
FOR CONSIDERATION BY THE GOVERNOR AND  
THE 2009 SESSION OF THE GENERAL ASSEMBLY**

WHEREAS, the Virginia Board of Education wishes to communicate its spending priorities to the Governor and the General Assembly for their consideration as they make budget decisions; and

WHEREAS, the Board believes nonetheless that public education is of the highest priority in the state budget, and that the Standards of Quality (SOQ) is the foundation program for public education in the Commonwealth; and

WHEREAS, the Standards of Quality define the minimum foundation the Commonwealth must provide to meet its constitutional obligation to maintain “an educational program of high quality” for the children of Virginia;

NOW, THEREFORE, BE IT RESOLVED that the Board of Education reaffirms its commitment to the seven staffing recommendations that have not yet been funded while recognizing the budget constraints facing the Governor and General Assembly during the 2009 Session. The Board asks that consideration of these additional staffing recommendations be made when the revenue picture has improved.

Moreover, in the event that funding for K-12 public education must be reduced as a result of declining revenues, the Board urges the Governor and the General Assembly to give local school boards flexibility in meeting the staffing requirements in the Standards of Quality while maintaining accountability requirements in the Standards of Learning program.

BE IT FURTHER RESOLVED that the Board’s position contained herein shall be communicated to the Governor and the 2009 General Assembly for their consideration.

**Estimated Cost of the Board of Educations Unfunded SOQ Recommendations  
Fiscal Year 2009-2010**

Require one full-time position per 1,000 students in grades kindergarten through 12 to provide schools support in data management and the utilization and administration of state assessments. The data manager/test coordinator would hold a license issued by the Board of Education and would serve as a resource to principals and classroom teachers in analyzing and interpreting data for instructional purposes;	\$ 43.4 million
Require one full-time principal in every elementary school, middle school, and high school;	8.0 million
Require one assistant principal for each 400 students in every elementary school, middle school, and high school;	59.3 million
Require one full-time equivalent instructional position for each 1,000 students in average daily membership to serve as reading specialists for the school division;	43.4 million
Require local school boards to employ speech-language pathologists in sufficient numbers to ensure that a caseload does not exceed 60 students per position;	4.6 million
Require one full-time instructional position for each 1,000 students in grades kindergarten through eight to serve as the mathematics teacher specialist; and	29.5 million
Require local school boards to employ instructional and paraprofessional staff to ensure the following maximum pupil-teacher ratios for students who are blind or vision impaired: Level I, resource teacher, 24 to one, Level II, self-contained with an aide, 10 to one; self-contained without an aide, eight to one; or Level II, self-contained, student weight of 2.5.	3.8 million
<b>Total</b>	<b>\$192.0 million</b>



## **Summary of Major Elements:**

The agenda for the summit has been divided into four strands, with three sessions each:

- *Engaging the Student, Engaging the Family: Going Beyond the School Door:* Presents effective practices involving schools and community partners that provide supports, such as mentoring, after-school and service learning programs
- *Counteracting Loss: Making a Living, Making a Difference:* Presents effective programs initiated by schools, businesses, community colleges and other organizations that provide opportunities to regain lost academic ground and prepare for continued education and meaningful work
- *From the State House to the School House: The Intentional and Unintentional Impact of Policies:* Addresses legislative and administrative policies at the state and local level that promote student support and persistence to graduation or may have negative consequences for students
- *Maximizing Resources: Knowing What is Available, Combining Resources:* Presents information about public and private resources available to support programs for students

The day begins with presentations and greetings from the Superintendent of Public Instruction, the Governor (invited), and the Board of Education President, who will introduce the keynote speaker, Bill Milliken, founder of Communities in Schools. After a Youth Panel discusses "What You Need to Know about Dropping Out," there are three breakout sessions for each of the strands named above. Dr. Thomas Brewster is participating in a session under the "From the State House to the School House" strand. In the afternoon, a panel discussion by representatives from the various sectors will be held. The panel session is entitled "Coming Together," and panel members include state and local elected and appointed public officials, representatives from the business and service sectors, a representative from the juvenile justices, and a representative of local school boards. Dr. Emblidge will participate on this panel. The panel will discuss collaborative and coordinated action to respond to the dropout issue by responding to questions posed by the moderator, Dr. Loujeana Bost from the National Dropout Prevention Center. This panel's discussion will set the stage for the action planning in the afternoon by summit participants.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board accept this report.

**Impact on Resources:** The summit is being supported by nonstate funds, including the grant from America's Promise, and anticipated grants from several businesses working with the planning committee.

**Timetable for Further Review/Action:** Two Superintendents' Memos. have announced the summit and provided information concerning registration (SUPTS. MEMO NO. 182 of August 15, 2008 and SUPTS. MEMO of September 12, 2008). The Project Leadership Committee met on September 23 to review the program and to receive information in order to promote attendance at the summit.

# **PUBLIC HEARING:**

## **Public Hearing on the Proposed Regulations Governing Educational Services for Gifted Students**

In May 2007, the Board of Education authorized the Department of Education to distribute for public comment proposed revisions to the Regulations Governing Educational Services for Gifted Students. Pursuant to the requirements of the Administrative Process Act and the relevant Executive Order, the proposed revisions are now open for public comment. A total of four public hearings will be held across the state, one of which will be held at the adjournment of the Board's business meeting on September 25, 2008.

The *Regulations Governing Educational Services for Gifted Students* provide definitions; criteria for screening, referral, and identification of gifted students; delivery of services parameters; and elements of appropriately differentiated curriculum and instruction necessary to meet the learning needs of these students. The regulations also provide requirements for professional development of instructional personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted.

Background information on the proposed revisions is attached.

### **Guidelines for speakers attending the public hearing:**

Speakers will be recognized in the order in which they registered on the sign-up sheet.

Each speaker is limited to three minutes.



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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	<u>8VAC20-40-10</u> through <u>8VAC20-40-70</u>
<b>Regulation title</b>	Regulations Governing Educational Services for Gifted Students
<b>Action title</b>	Revision of regulations school divisions must meet in their gifted education programs, Kindergarten - Grade 12
<b>Date this document prepared</b>	May 30, 2007 Revised 9/17/2007

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

### Brief summary

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

The *Regulations Governing Educational Services for Gifted Students* provide definitions; criteria for screening, referral, and identification of gifted students; delivery of services parameters; and elements of appropriately differentiated curriculum and instruction necessary to meet the learning needs of these students. The regulations also provide requirements for professional development of instructional personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted.

The existing regulations were approved by the Virginia Board of Education in 1993. The purpose of these proposed revisions is to integrate findings from relevant research regarding identification, curriculum and instruction, delivery of services, and professional preparation into the standards Virginia public schools use to establish and operate programs for which the General Assembly has allocated funds through the *Standards of Quality*.

## Legal basis

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

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Section 22.1-16 of the *Code of Virginia* vests the Board of Education with the authority to adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

## Purpose

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

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This action is essential to ensure that students in the Commonwealth are provided with an education that is commensurate with their abilities. The state definitions and provisions found in the *Regulations Governing Educational Services for Gifted Students* establish the basic expectation for school divisions' services for gifted students. These regulations ensure that school divisions' programs respond appropriately to the learning needs of gifted students, especially those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed regulations reflect the relevant findings from research regarding effective program options, appropriate curricular designs and instructional strategies, and the significance of teacher professional development in providing appropriate instruction for gifted students.

## Substance

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

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The following changes are proposed to the *Regulations Governing Educational Services for Gifted Students*:

1. Additions to and revisions of critical terms;
2. Clarification of the screening, referral, identification, and placement components;
3. Addition of parental rights, notification, consent, and appeals information;
4. Revision of components of the local plan for the education of the gifted;

5. Revision of the role and function of the local advisory committee for the education of the gifted to comply with section 22.1-18.1 of the *Code of Virginia*; and
6. Addition and expansion of annual report expectations to comply with section 22.1-18.1 of the *Code of Virginia*.

## Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

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

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The primary advantages of the proposed regulations for the public or the Commonwealth:

1. The proposed regulations require alignment of services for gifted students with current standards and practices found in relevant research and practice;
2. The proposed regulations establish basic expectations for the annual screening of all students for gifted education services;
3. The proposed regulations reduce the number of instruments used to identify gifted students from four to three;
4. The proposed regulations establish basic expectations that programs for the gifted include monitoring and assessment of student outcomes;
5. The proposed regulations establish expectations that programs for the gifted will be provided within the school day and week to ensure these students have time to study with their age-level peers, their intellectual peers, and time to study independently; and
6. The proposed regulations establish expectations that school boards, and not the Department of Education, will approve local plans that are in compliance with the regulations.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

## Requirements more restrictive than federal

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

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There are no applicable federal requirements.

**Localities particularly affected**

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

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There are no disproportionately significant negative or positive effects of the proposed regulations to any specific locality.

**Public participation**

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

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In addition to any other comments, the Board of Education is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall Web site ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Notice of the public hearing will be posted on the Commonwealth Calendar and will be posted as required at the Department of Education. Written notice of the public hearing will be sent to interested individuals and professional organizations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

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<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>There is minimal cost to the state to implement the proposed regulation revisions. Existing allocations should be sufficient to fund the state’s responsibilities.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>It is anticipated that additional costs would not exceed those funds currently allocated by the General Assembly through the <i>Standards of Quality</i>.</p> <ol style="list-style-type: none"> <li>1. SOQ Basic Aid Funding – Gifted education funding supports the state share of one full-time equivalent instructional position per 1,000 students in adjusted average daily membership.</li> <li>2. Governor’s School Categorical Funding –</li> </ol>

	<p>Governor's School funding supports gifted and talented high school students through a variety of Governor's Schools that operate during the school year. These programs provide an opportunity for these students to study with fellow students of similar interest and abilities across the Commonwealth. The schools offer specialized curriculum offerings. State funds are provided to assist with the costs of operations for residential and regional programs held during the summer.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>Public elementary, middle, and secondary schools, local school boards, school administrators, and institutions of higher education will be affected by the revisions to the regulations.</p>
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Elementary, middle, and secondary schools in Virginia's 132 school divisions will be affected by the revisions to the regulations. The proposed regulations do not affect small businesses.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>Estimates of the cost of the regulations would vary based on the size and levels of service Virginia's 132 school divisions choose to implement. However, the cost should be minimal since the proposed regulations do not impose major changes in requirements from previous regulations. The proposed regulations do not affect small businesses.</p>

**Alternatives**

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

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Neither the 1993 *Regulations Governing Educational Services for Gifted Students* nor these revisions increase the responsibilities of localities; small businesses will not be affected at all. There are no viable alternatives to updating these regulations.

**Regulatory flexibility analysis**

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

The revised regulations are less stringent on school divisions since the expectation that the divisions would present their local plans for the education of the gifted to the Department of Education for approval is removed. Such approval now will become a matter for the local school board based on a process it establishes. School divisions will continue to report their implementation of the local plan through the annual report, programs for the gifted, authorized by §22.1-18.1. *Annual report on gifted education required; local advisory committee on gifted education, Code of Virginia.*

The current *Regulations Governing Educational Services for Gifted Students* do not affect small businesses; consequently, these revisions do not change the affect on small business.

### Public comment

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

Three focus groups and public comment from 19 constituents provided the department with recommendations used in the development of these revisions to the current regulations. A special regulations advisory group, the Virginia Advisory Committee for the Education of the Gifted, and the Virginia Administrative Consortium for Gifted Education offered comments and reviews of the current regulations.

The proposed regulations are more explicit and reflect relevant research and practices. The recommendations of the focus groups and the public comment were considered during the review process and were incorporated when possible.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Karen Lanning, parent	Supports review; no specific request.	No specific change requested.
Elizabeth Boylan, parent	Seeks increased funding especially for additional staff and faculty.	Department does not have the authority to increase or designate additional funds.
Lee Lorber, teacher	Supports review; no specific request.	No specific change requested.
Lisa Dooley, parent	Supports review; supports these programs.	No specific change requested.
Claire Goodwin, parent	Seeks increased funding.	Department does not have the authority to increase or designate additional funds.
B. Black, parent	Seeks sufficient funding for qualified staff to provide extra	Department does not have the authority to increase or designate additional funds.

Commenter	Comment	Agency response
	gifted services, especially as compared to remedial services.	
Mike Warnalis, parent	<p>1. Supports the revision of the regulations and the opportunity to offer suggestions.</p> <p>2. Requests policies to ensure that consistent educational styles and formats of services are offered at all grades, so that middle and high school programs are as strong as are elementary programs.</p>	<p>1. No specific change requested.</p> <p>2. Clarification in the revised regulations of service options and curriculum and instruction expectations for school division's services at all grades, kindergarten through grade twelve.</p>
Kim Blair, parent	Supports the revision of the regulations.	No specific change requested.
Cynthia Coleman, parent	Supports increased middle and high school programs for gifted students.	Clarification in the revised regulations of service options and curriculum and instruction expectations for all grades, kindergarten through grade twelve.
Mike Mitchell, parent	Requests the removal of the word "public" in the definition of applicability to public school students.	Current regulation does not prevent school divisions from providing such services as determined by the school board. No changes were made in the revised regulations.
Liz Nelson, executive director, Virginia Association for the Gifted	<p>1. Requests that specific academic aptitude include mathematics, sciences, English and language arts, <u>or</u> history and social studies.</p> <p>2. Requests that programs serving visual and performing arts and practical and technical arts programs be optional areas of service, based on local needs.</p> <p>3. Requests that when testing occurs, that norm-referenced instruments be used in the identification and placement.</p> <p>4. Seeks inclusion of divisionwide screening to widen pool of candidates.</p> <p>5. Requests that multiple criteria for identification include multiple sources of information or data on each student.</p> <p>6. Requests that all students, including special education and English language learners be screened for inclusion in gifted education programs.</p>	<p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and sciences.</p> <p>2. Clarification that visual and performing arts and career and technical programs are optional areas of service that school divisions may elect to serve.</p> <p>3. Clarification of the areas of appropriate assessment, including norm-referenced assessment, for the identification of gifted students.</p> <p>4. Current regulations and revisions continue to require divisionwide screening of all students, kindergarten through grade twelve.</p> <p>5. Clarification has been incorporated to require no fewer than three sources of information or data on each referred student.</p> <p>6. Clarification of language regarding responsibility to screen students whose identification may be affected because they are economically disadvantaged,</p>

Commenter	Comment	Agency response
	<p>7. Requests that the local school board and the Department of Education ensure that divisions are in compliance and both approve the school division's local plan for the education of the gifted.</p> <p>8. Requests that modifications to local plans be reviewed and approved by the Department.</p> <p>9. Requests that local plans provide goals for specific identification, delivery of services, curriculum and instruction, teacher preparation, ongoing professional development, and parent and community involvement.</p> <p>10. Specify that service options include accelerative provisions at the classroom, school, and school division levels to enable students to learn at their own pace.</p> <p>11. Requests that an add-on endorsement in gifted educations shall include a minimum of 12 hours of graduate coursework in gifted education; and shall include a practicum of at least 45 instructional hours. One year of successful full-time teaching experience in a public or accredited nonpublic school may be accepted in lieu of the practicum. A mentor with a valid license with an endorsement in gifted education must be assigned to the teacher. Professional development in-service training shall be on going, comprehensive, and reflective of research-based best practices in the field of gifted education.</p>	<p>have limited English proficiency, or have a disability.</p> <p>7. Approval of local plan now rests with the local school board.</p> <p>8. See note 7.</p> <p>9. Clarifications have been added to the revised regulations for school divisions to develop goals in the prescribed areas.</p> <p>10. Clarification of language requiring programs for the gifted to meet the learning needs of gifted students through acceleration options. Clarification of language that requires students to be provided time to study and learn with their age-level peers, their intellectual peers, and time to study and learn independently.</p> <p>11. <i>Licensure Regulations for School Personnel 8VAC20-21-270</i> include competencies for the add-on endorsement in gifted education, requiring 12 hours of graduate studies, and a 45-instructional hour practicum. Language has been added to the revised regulations indicating that professional development for teachers of the gifted must be based on those same competencies.</p>
Dave Dubay, teacher	1. Requests funding for gifted programs to be used only for	1. Department does not have the authority to increase or designate additional funds.

Commenter	Comment	Agency response
	<p>gifted programs and not rolled into the general budget.</p> <p>2. Requests sufficient funding for all qualified candidates for Governor's Schools to attend.</p>	<p>2. Department does not have the authority to increase or designate additional funds.</p>
Deborah Piper, parent	<p>1. Requests that regulations be revised to address specific and detailed accountability procedures for the delivery of services, that differentiated instruction in heterogeneous classrooms, and that differentiation plans to be included in school divisions' local plans for the education of the gifted.</p> <p>2. Requests additional funding to ensure delivery of services.</p>	<p>1. Changes were made in the reporting of services through the annual report, programs for the gifted, concerning the school division's responsibility to determine its delivery of services, curriculum, instruction, and documentation of student outcomes.</p> <p>2. Department does not have the authority to increase or designate additional funds.</p>
Dr. Andreas Tolk	Seeks mandatory education for teachers of the gifted who provide differentiated services.	Revised regulations continue to require divisions to indicate what training teachers of the gifted are required to have and how that training will be provided. Clarification of the language related to professional development requires that professional development be based on the competencies for the add-on endorsement in gifted education found in 8 VAC20-21-270.
Margaret Turley, gifted education coordinator	<p>1. Requests specific definition of "humanities" as an area of identification.</p> <p>2. Requests guidelines for local plans to include improved staffing, settings, instructional approaches, and evaluation options.</p> <p>3. Requests guidelines for local plans to include standards and accountability for teaching and learning, pupil-teacher ratios, and per pupil funding.</p>	<p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and science.</p> <p>2. Limited changes were made since staffing, settings, instructional approaches, and evaluation options are determined at the local level. Revisions require programs for the gifted to meet the assessed learning needs of gifted students and include acceleration options. Clarification of language requires students to be provided time to study and learn with their age-level peers, their intellectual peers, and time to study and learn independently.</p> <p>3. Limited changes were made since standards, accountability for teaching and learning, pupil-teacher ratios, and per pupil funding are determined at the local level. Revisions continue to require divisions to indicate required training for teachers of the gifted.</p>

Commenter	Comment	Agency response
	<p>4. Requests revision to language for selection, evaluation, and training of gifted education teachers.</p>	<p>4. Clarification of the regulatory language related to professional development requiring that such training be based on the competencies that form the basis of the add-on endorsement in gifted education found in 8VAC20-21-270.</p>
<p>Louise Epstein, president, Fairfax County Association for the Gifted</p>	<p>1. Requests establishment of the 90<sup>th</sup> percentile and above as the boundary for eligibility.</p> <p>2. Requests that divisions be required to describe and evaluate gifted education programs separately for different categories of gifted students.</p> <p>3. Requests requirement that gifted students' knowledge be measured yearly through above-grade level, standardized tests, as a measure of program effectiveness, instead of the use of the <i>Standards of Learning Assessments</i>.</p> <p>4. Requests that school Web sites include information about specific grade services for each grade-level served.</p> <p>5. Requests that divisions be required to provide requested data within 1-2 months of such requests; specifically that Advanced Placement (AP) test scores be reported by single scores, (e.g. 3, 4, 5), not by aggregate scores (e.g. 3-5).</p> <p>6. Requests that membership by current and past employees of the school division be limited to no more than 20 percent of the</p>	<p>1. Limited changes were made since identification and placement decisions are made by the school division based on their specific needs.</p> <p>2. Revisions specify that a summary of the school division's evaluation for program effectiveness be provided as part of the annual report. Limited changes were made since gifted education program evaluation decisions are made at the local level based on the needs of local school divisions.</p> <p>3. Revised regulations include a requirement that one of the measures for identification in general intellectual aptitude or specific academic aptitude be a norm-referenced instrument, which allows divisions the opportunity to use out-of-level testing. Limited changes were made since gifted education program evaluation decisions are made at the local level based on the needs of local school divisions. Clarification has been made to require divisions to monitor and assess student outcomes and to include a summary of the division's evaluation of program effectiveness to be provided as part of the division's annual report.</p> <p>4. Limited changes were made since school divisions may use a variety of methods to make information available to the public.</p> <p>5. Limited changes were made since access to public information may be sought through requirements of the <i>Virginia Freedom of Information Act</i>.</p> <p>6. Limited revisions were made to bring the description of the role and function of</p>

Commenter	Comment	Agency response
	local advisory committee.	the local advisory committee into agreement with §22.1-18.1. <i>Annual report on gifted education required; local advisory committee on gifted education.</i>
David and Meghan Rainey, parents	<p>1. Requests that “humanities” be specifically defined as language arts and English and history and social science to be consistent with other state documents.</p> <p>2. Requests the elimination of designation of “potentially gifted,” identifying children only as “gifted.”</p> <p>3. Requests language clarification that students must be served sequentially and continuously beginning in kindergarten through graduation.</p> <p>4. Requests clarification that divisions must offer either specific academic aptitude (SAA) or general intellectual aptitude (GIA); with technical and practical arts (TPA) and visual and performing arts (VPA) as optional services.</p> <p>5. Requests that divisions be required to use at least four evaluation criteria for all students, including special populations.</p>	<p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and sciences.</p> <p>2. Existing definition does not include “potentially gifted” category; no change to that language has been made.</p> <p>3. Revisions include clarification of delivery of services models and curriculum and instruction components of the local plan for the education of the gifted to include monitoring to ensure that students’ learning needs in their strength areas are supported continuously and sequentially, from kindergarten through graduation.</p> <p>4. Revisions include clarification of language to ensure that school divisions offer services in general intellectual aptitude or specific academic aptitude from kindergarten through graduation. Further clarification that services for technical and practical arts (TPA) and visual and performing arts (VPA) may be offered at the school division’s discretion.</p> <p>5. Revisions require school divisions to use a minimum of three sources of data or assessment measures to determine eligibility for each referred student. School divisions were duplicating information in the administration of both aptitude and achievement measures. Statistics indicate that the correlation between aptitude and achievement is .7, with the aptitude measure being more predictive of potential.</p>
Marti Freidman	Seeks to establish grade standards for identified students in programs (“C” or above).	Limited changes were made since gifted education program evaluation decisions are based on the needs of local school divisions. Clarification has been made to require divisions to monitor and assess student outcomes and to provide summaries of those assessments through the annual report.
Bryan Byers	1. Requests universal eligibility criteria across state.	1. Limited changes were made to acknowledge that determination of area of

Commenter	Comment	Agency response
	<p>2. Requests that [Governor’s] schools for gifted students be centrally located for joint participation of smaller divisions; include elementary students.</p> <p>3. Requests increased services for elementary students, not just pull-out 25 minutes twice a week.</p> <p>4. Requests assurance that all children who qualify for Governor’s schools be allowed to attend (not just quota per school).</p>	<p>giftedness, identification, and placement decisions are local decisions.</p> <p>2. No changes were made in regulations since participation in Governor’s schools is voluntary. Department does not have the authority to increase or designate additional funds.</p> <p>3. Clarification of language for delivery of services and curriculum and instruction indicate that programs shall be continuous and sequential in nature and that student outcomes be monitored and assessed.</p> <p>4. Department does not have the authority to increase or designate additional funds.</p>

## Family impact

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

The primary advantages of the proposed regulations for families may include:

1. Greater access to gifted services that are designed to meet the educational needs of students through increased availability of the local plan;
2. Better alignment of services for students based on their individual strengths and the application of current relevant research and practice;
3. Increased parental and student involvement through the establishment and monitoring of student outcomes;
4. Increased communication between the school division and parents of identified students through the periodic reports of student progress;
5. Increased access to academic challenges; accelerated acquisition of coursework; and entry into college-level opportunities for growth;
6. Increased earning power associated with the acquisition of educational advancement; and
7. Increased direct responsibility for the local school board in the development, approval, and annual evaluation of the comprehensive plan for the education of the gifted.

## Detail of changes

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

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

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
8VAC20-40-10. Applicability.	No change	This chapter shall apply to all local school divisions in the Commonwealth.	The proposed language clarifies the existing language and moves applicability language from 8VAC20-40-30, regarding the applicability of these services for gifted students from kindergarten through high school graduation, to this section to eliminate redundancy.
8VAC20-40-20. Definitions.	No change	The words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise:	The proposed language indicates that the definitions apply to the given term, unless the context clearly indicates otherwise.
8VAC20-40-20. Definitions.	No change	"Appropriate differentiated curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research or production, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus on issues, themes, and ideas within and across areas of study.	The proposed language clarifies that appropriately differentiated curriculum and instruction for gifted students focus on (1) content and strategies in the student's area of strength, (2) that recognize the student's need for advanced content and pacing, and (3) that are presented continuously and sequentially in response to established student outcomes and expectations.
8VAC20-40-20. Definitions.	No change	No previous definition	The proposed revision adds a definition for "Eligible Student" to establish that "identification" and "eligibility" are interchangeable terms.
8VAC20-40-20. Definitions.	No change	"Gifted students" means those students in public elementary and secondary schools beginning with kindergarten through graduation whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These	The proposed revision clarifies that "Gifted Students" are those who demonstrate high levels of accomplishment or who show the potential in one or more specific areas for higher levels of accomplishment when compared to others of their same age, experience, and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8VAC20-40-20. Definitions.	No change	<p>students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance capabilities, which may include leadership, in one or more of the following areas:</p> <p>1. Intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.</p>	<p>environment.</p> <p>The proposed revision clarifies that general intellectual aptitude is demonstrated by a student's superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond that of their age-level peers.</p>
8VAC20-40-20. Definitions.	No change	<p>2. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.</p>	<p>The proposed revision clarifies that specific academic aptitude is demonstrated by a student's superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in English, history and social studies, mathematics, or science.</p>
8VAC20-40-20. Definitions.	No change	<p>3. Technical and practical arts aptitude. Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.</p>	<p>The proposed revision clarifies that career and technical aptitude is demonstrated by a student's superior reasoning; persistent technical curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in career and technology fields.</p>

8VAC20-40-20. Definitions.	No change	4. Visual or performing arts aptitude. Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.	The proposed revision clarifies that visual and performing arts aptitude is demonstrated by a student's superior reasoning; persistent artistic curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in visual and performing arts.
8VAC20-40-20. Definitions.	No change	"Identification" is the process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.	The proposed revision clarifies that identification of students is a multi-staged process. The proposed language indicates the identification process starts with divisionwide screening, with a formal referral phase, followed by the assessment of students' aptitudes using multiple criteria, and ending with the determination of eligibility by the identification and placement committee.
8VAC20-40-20. Definitions.	No change	"Identification/Placement Committee" means a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division.	The proposed revision clarifies that the building- or division-level committee determines eligibility based on the student's assessed aptitude and learning needs; and it expands the definition to clarify that the identification and placement committee is responsible for the determination of service options considered appropriate for the student based on the student's assessed learning needs.
8VAC20-40-20. Definitions.	No change	None	The proposed revision adds a definition of "Learning needs of gifted students" to clarify that eligible students shall be provided instruction that responds to their needs for advanced and complex content, that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity;

8VAC20-40-20. Definitions.	No change	"Placement" means the determination of the appropriate educational option for each eligible student.	<p>exceptional problem solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.</p> <p>The proposed revision clarifies the existing language that multiple options may need to be provided to the identified or eligible student.</p>
8VAC20-40-20. Definitions.	No change	None	<p>The proposed revision adds a definition of "Referral" to define the formal and direct process that parents, teachers, professionals, or students use to request that a kindergarten through twelfth-grade student be assessed for gifted education services.</p>
8VAC20-40-20. Definitions.	No change	"Screening" is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification.	<p>The proposed revision clarifies the existing language regarding the division-wide search conducted across all students at least once annually to determine which students should be referred for identification and service in the gifted education program. The proposed revision also indicates that, at a minimum, the annual screening shall consist of a review of current assessment data for all kindergarten through twelfth-grade students, with students selected through the school division's screening process then referred for formal identification.</p>
8VAC20-40-20. Definitions.	No change	"Service options" include the instructional approach or approaches, setting or settings, and staffing selected for the delivery of appropriate service or services that are based on student needs.	<p>The proposed revision clarifies that service options include the instructional approaches, settings, and staffing selected for the delivery of appropriate programs based on the students' assessed needs in their areas of strength.</p>

8VAC20-40-20. Definitions.	No change	"Student outcomes" are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners.	The proposed revision clarifies that student outcomes for advanced achievement and performance are based on a review of the student's assessed learning needs and the goals for the program of study, and those outcomes are reviewed and reported to parents or legal guardians. The proposed revision moves some of this language to 8VAC20-40-10 and deletes the remainder to avoid redundancy.
8VAC20-40-30. Applicability.	Repealed		The proposed revision merges and realigns the screening, referral, identification, and placement processes into one section. The proposed language requires that each school division shall establish uniform procedures with common criteria for screening, referral, and identification of general intellectual or specific academic aptitude gifted students; clarification that specific academic aptitudes include procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science; and an option for school divisions to identify and serve gifted students in career and technical aptitude or visual and performing arts aptitude, or both, at their discretion.
8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	A. Each school division shall establish a uniform procedure with common criteria for screening and identification of gifted students. If the school division elects to identify students with specific academic aptitudes, they shall include procedures for identification and service in mathematics, science, and humanities...	

8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	B. Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee.	The existing language in this section has been moved to a new section, 8VAC20-40-55. Parental rights for notification, consent, and appeal.  The proposed revision clarifies that the screening process shall include, at minimum, an annual review of current assessment data.
8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	C. These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted.	(8VAC20-40-40.B) The proposed revision clarifies that school divisions shall permit referrals from school personnel, parents or legal guardians, other persons of related expertise, as well as peer- or self-referral; and that such referrals shall be accepted for kindergarten through twelfth-grade students.
8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	D. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.	(8VAC20-40-40.C) The proposed revision clarifies that the identification and placement committee shall review pertinent information; determine a student's eligibility for the division's services; and determine which service options match the learning needs of the eligible student.  (8VAC20-40-40.D) Additional proposed language clarifies the use of screening data in subsequent stages of the identification process.  (8VAC20-40-40.B)  The proposed revision adds new language encouraging school divisions to accept valid and reliable data for transfer students from identification processes conducted previously by other school divisions.

8VAC20-40-40. Screening, referral, identification, and placement.	Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:	(8VAC20-40-40.D) The proposed revision clarifies that the identification of gifted students shall be based on multiple criteria designed to seek out those students with superior aptitudes, including students in underserved populations, and that identification include data from multiple sources.
	<ol style="list-style-type: none"> <li>1. Assessment of appropriate student products, performance, or portfolio;</li> <li>2. Record of observation of in-classroom behavior;</li> <li>3. Appropriate rating scales, checklists, or questionnaires;</li> <li>4. Individual interview;</li> <li>5. Individual or group aptitude tests;</li> <li>6. Individual or group achievement tests; and</li> <li>7. Record of previous accomplishments (such as awards, honors, grades, etc.);</li> <li>8. Additional valid and reliable measures or procedures.</li> </ol>	<p style="text-align: center;">(8VAC20-40-40.D.1)</p> <p>This section also reduces the number of categories that school divisions are required to use in the identification process from four to three:</p> <ol style="list-style-type: none"> <li>1. Assessment of appropriate student products, performance, or portfolio;</li> <li>2. Record of observation of in-classroom behavior;</li> <li>3. Appropriate rating scales, checklists, or questionnaires;</li> <li>4. Individual interview;</li> <li>5. Individually-administered or group-administered, norm-referenced aptitude tests;</li> <li>6. Record of previous accomplishments (such as awards, honors, grades, etc.); and</li> <li>7. Additional valid and reliable measures or procedures.</li> </ol>

(8VAC20-40-40.D.3)

8VAC20-40-50. Criteria for screening and identification.	8VAC20-40-40. Screening, referral, identification,	If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the	The proposed revision clarifies that the identification process for a general intellectual aptitude or a specific academic aptitude program shall include
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	and placement.	categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted.	an individually administered or group-administered, norm-referenced aptitude test as one of the three measures used in the school division's identification procedure.
			(8VAC20-40-40.D.4)
			Identification for visual and performing arts or career and technical aptitude identification shall include a portfolio or other performance assessment measure.
			(8VAC20-40-40.D.5)
8VAC20-40-50. Criteria for screening and identification.	8VAC20-40-40. Screening, referral, identification, and placement.	None	The proposed language establishes an expectation that parents or legal guardians shall receive a determination of a referred student's eligibility within 60 business days of the receipt of a referral.
			(8VAC20-40-40.E)
			Additional new language indicates that identified gifted students shall be offered placement in a classroom or program setting that provides appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students and who monitor and report student outcomes to the parents or legal guardians.

8VAC20-40-50. Criteria for Screening and Identification.	Repealed		
8VAC20-40-55. Parental rights for notification, consent, and appeal.	None		The proposed language clarifies the rights of parents or legal guardians by specifying that school divisions shall provide written notification to and seek written consent from parents or legal guardians for identification of and services for eligible students.
			(8VAC 20-40-55.A.1–A.3)
8VAC20-40-55. Parental rights for notification, consent, and appeal.	None		The proposed language realigns information from 8VAC20-40-40, clarifying the rights of parents or legal guardians for due process, including the right to appeal within ten days of receipt of the school division’s determination of eligibility, change in placement, or exit from the school division’s gifted education program.
			(8VAC20-40-55.B.1–B.2)
8VAC20-40-55. Parental rights for notification, consent, and appeal.	None		The proposed language clarifies that administrators in the student’s school have access to the results of the identification and placement committee’s eligibility decisions.
			(8VAC20-40-55.C)
8VAC20-40-60. Local plan.	8VAC20-40-60. Local plan, local advisory committee, and annual report.	A. Each school division shall submit to the Department of Education for approval a plan for the education of gifted students. Modifications to the plan shall be reported to the Department of Education on dates specified by the Department.	The proposed revision requires that each school board review and approve annually a comprehensive local plan for the education of gifted students that includes components of these regulations, and that opportunities for public review are included in the plan development, review, and approval process.
			(8VAC20-40-60.A)

It also clarifies details of each of the required components of the plan.

(8VAC20-40-60.A.1-A.14)

8VAC20-40-60.  
Local plan.

8VAC20-40-60. Local plan, local advisory committee, and annual report.

B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members. This committee shall reflect the ethnic and geographical composition of the school division. The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing through the division superintendent to the school board.

The proposed language revises the regulations to comply with § 22.1-18.1. *Code of Virginia*, which establishes a local advisory committee, appointed by the school board, composed of parents, school personnel, and other community members, that reviews the local plan for the education of gifted students annually, determines the extent to which the plan for the previous year was implemented, and reports its findings annually in writing to the division superintendent and the school board.

(8VAC20-40-60.B)

8VAC20-40-60.  
Local plan.

8VAC20-40-60. Local plan, local advisory committee, and annual report.

The proposed language revises the regulations to comply with § 22.1-18.1. *Code of Virginia*, which establishes that each school division shall submit an annual report to the Department of Education in a format prescribed by the Department.

(8VAC20-40-60.C)

8VAC20-40-70.  
Funding.

Repealed

These revisions to the *Regulations Governing Educational Services for Gifted Students* do not replace an emergency regulation.

**Project 590 - Proposed**

**STATE BOARD OF EDUCATION  
Revision of Gifted Program regulations 2007**

CHAPTER 40

REGULATIONS GOVERNING EDUCATIONAL SERVICES FOR GIFTED STUDENTS

Part I

~~Applicability and Definitions~~

**8VAC20-40-10. Applicability.**

This chapter shall apply to all local school divisions in the Commonwealth, ~~regarding their services for students from kindergarten through high school graduation.~~

**8VAC20-40-20. Definitions.**

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

~~"Appropriately differentiated curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula provide emphasis on both accelerative and enrichment opportunities for curriculum and instruction"~~ means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of eligible or identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction; (ii) original research or production; (iii) problem finding and solving; (iv) higher level thinking that leads to the generation of products; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes, and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers.

"Eligible student" means a student who has been identified as gifted by the identification and placement committee for the school division's gifted education program.

"Gifted students" means those students in public elementary, middle, and secondary schools beginning with kindergarten through graduation whose abilities who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age, experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities aptitudes and who have evidence of high performance capabilities, which may include leadership, in one or more of the following areas:

1. Intellectual General intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery

of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers.

~~2. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas that include English, history and social science, mathematics, and science.

~~3. Technical and practical arts Career and technical aptitude. Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent technical curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in career and technical fields.

~~4. Visual or performing arts aptitude. Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.~~ Such students demonstrate or have the potential to demonstrate superior creative reasoning and imaginative expression; persistent artistic curiosity; and advanced acquisition and mastery of techniques, perspectives, concepts, and principles beyond their age-level peers in visual or performing arts.

"Identification" is means the multi-staged process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available. finding students who are eligible for the division's gifted education program. The identification process begins with a division-wide screening component, that is followed by a referral component, and that concludes with the determination of eligibility by the school division's identification and placement committee. The identification process includes the review of valid and reliable student data based on criteria established and applied consistently by the school division. The process shall include the review of information or data from multiple sources to determine whether a student's aptitudes and learning needs are most appropriately served through the school division's gifted education program.

~~"Identification/Placement Committee"~~ "Identification and placement committee" means a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division. the building-level or division-level committee that

shall determine a student's eligibility for the division's gifted education program, based on the student's assessed aptitude and learning needs. The identification and placement committee shall determine which of the school division's service options are appropriate for meeting the learning needs of the eligible student.

"Learning needs of gifted students" means gifted students' needs for advanced and complex content that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.

"Placement" means the determination of the appropriate educational options for each eligible student.

"Referral" means the formal and direct process that parents, teachers, professionals, or students use to request that a kindergarten through twelfth-grade student be assessed for gifted education program services.

"Screening" is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification. means the divisionwide search each school division conducts at least once annually across all its students to determine which students should be referred for identification and service in the gifted education program. The annual screening shall, at a minimum, consist of a review of current assessment data for all kindergarten through twelfth-grade students. Students selected through the school division's screening process are then referred for formal identification.

"Service options" include means the instructional approach or approaches, setting or settings, and staffing selected for the delivery of appropriate service or services that are based on student programs provided to eligible students based on their assessed needs in their areas of strength.

"Student outcomes" are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners. means the advanced achievement and performance expectations established for each gifted student, through the review of the student's assessed learning needs and the goals of the program of study, that are reviewed and reported to parents or legal guardians.

## Part II

### Responsibilities of the Local School Divisions

#### **8VAC20-40-30. Applicability. (Repealed.)**

~~The requirements set forth in this part are applicable to local school divisions providing educational services for gifted students in elementary and secondary schools from kindergarten through graduation.~~

#### **8VAC20-40-40. Identification. Screening, referral, identification, and placement.**

A. Each school division shall establish a uniform procedure with common criteria procedures for screening, referral, and identification of general intellectual or specific academic aptitude gifted students. If the school division elects to identify students with specific academic aptitudes, ~~they it~~ shall include procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science, and humanities. ~~These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted. Pertinent information, records, and other~~

~~performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division. School divisions may identify and serve gifted students in career and technical aptitude or visual and performing arts aptitude, or both, at their discretion.~~

~~B. Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee. These uniform procedures shall include a screening process that requires instructional personnel to review, at a minimum, current assessment data on each kindergarten through twelfth-grade student annually. Some data used in the screening process may be incorporated into multiple criteria reviewed by the identification and placement committee to determine eligibility, but those data shall not replace norm-referenced aptitude test data.~~

~~C. These uniform procedures shall permit referrals from school personnel, parents or legal guardians, or other persons of related expertise, as well as peer or self referral. Such referrals shall be accepted for kindergarten through twelfth-grade students.~~

~~D. An identification and placement committee shall review pertinent information, records, and other performance evidence for referred students. The committee shall include a professional who knows the child, as well as classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education. The committee shall (i) review data from multiple sources selected and used consistently within the division to assess students' aptitudes in the areas of giftedness the school division serves, (ii) determine whether a student is eligible for the division's services, and (iii) determine which of the school division's service options match the learning needs of the eligible student. The committee may review valid and reliable data administered by another division for a transfer student who has been identified previously.~~

~~1. Identification of students for the gifted education program shall be based on multiple criteria established by the school division and designed to seek out those students with superior aptitudes, including students for whom accurate identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. Data shall include scores from valid and reliable instruments that assess students' potential for advanced achievement, as well as instruments that assess demonstrated advanced skills, conceptual knowledge, and problem solving aptitudes.~~

~~2. Valid and reliable data for each referred student shall be examined by the building-level or division-level identification and placement committee. The committee shall determine the eligibility of each referred student for the school division's gifted education program. Students who are found eligible by the identification and placement committee shall be offered programs or courses with appropriately differentiated curriculum and instruction by the school division.~~

~~3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:~~

- ~~a. Assessment of appropriate student products, performance, or portfolio;~~
- ~~b. Record of observation of in-classroom behavior;~~
- ~~c. Appropriate rating scales, checklists, or questionnaires;~~

d. Individual interview;

e. Individually-administered or group-administered, norm-referenced aptitude tests;

f. Record of previous accomplishments (such as awards, honors, grades, etc.);

g. Additional valid and reliable measures or procedures.

4. If a program is designed to address general intellectual aptitude or specific academic aptitude, an individually administered or group-administered, norm-referenced aptitude test shall be included as one of the three measures used in the school division's identification procedure.

5. If a program is designed to address either the visual and performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as part of the data reviewed by the identification and placement committee.

E. Within 60 business days of the receipt of a referral, the identification and placement committee shall determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision. If a student is identified as gifted and eligible for services, the identification and placement committee shall determine which service options most effectively meet the assessed learning needs of the student. Identified gifted students shall be offered placement in a classroom or program setting that provides:

1. Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students; and

2. Monitored and assessed student outcomes that are reported to the parents and legal guardians.

**8VAC20-40-50. Criteria for screening and identification. (Repealed.)**

~~Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:-~~

~~1. Assessment of appropriate student products, performance, or portfolio;-~~

~~2. Record of observation of in-classroom behavior;-~~

~~3. Appropriate rating scales, checklists, or questionnaires;-~~

~~4. Individual interview;-~~

~~5. Individual or group aptitude tests;-~~

~~6. Individual or group achievement tests;-~~

~~7. Record of previous accomplishments (such as awards, honors, grades, etc.);-~~

~~8. Additional valid and reliable measures or procedures.-~~

~~If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted.-~~

**8VAC20-40-55. Parental rights for notification, consent, and appeal.**

A. School divisions shall provide written notification to and seek written consent from parents and legal guardians

1. To conduct any required assessment to determine a referred student's eligibility for the school division's gifted education program;

2. To announce the decision of the identification and placement committee regarding a referred student's eligibility for and placement in the school division's gifted education program; and

3. To provide services for an identified gifted student in the school division's gifted education program.

B. Each school division shall adopt a review procedure for students whose cases are appealed. This procedure shall involve a committee, the majority of whose members did not serve on the initial identification and placement committee and shall inform parents or legal guardians, in writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within ten business days of receipt of notification of the action by the division. The process shall include an opportunity to meet with an administrator to discuss the decision.

1. A parent or legal guardian of a student who was referred but not identified by the identification and placement committee as eligible for services in the school division's gifted education program shall be informed, in writing within ten business days, of the school division's process to appeal the committee's decision.

2. A parent or legal guardian of an identified gifted student may appeal any action taken by the school division to change the student's identification for, placement in, or exit from the school division's gifted education program.

C. Following the notification and consent of a parent or legal guardian, the identification and placement committee shall apprise school administrators of each student's eligibility status.

**8VAC20-40-60. Local plan-, local advisory committee, and annual report.**

A. Each school division board shall submit to the Department of Education for approval a review and approve annually a comprehensive plan for the education of gifted students that includes the components identified in these regulations. Modifications to the plan shall be reported to the Department of Education on dates specified by the department.

The development process for the school division's local plan for the education of the gifted shall include opportunities for public review of the school division's plan. The approved local plan shall be accessible through the school division's Web site and the school division shall ensure that printed copies of the comprehensive plan are available to citizens who do not have online access.

The plan shall include the following components as follow:

1. A statement of philosophy for the gifted education program;

2. A statement of the school division's gifted education program goals and objectives for identification, delivery of services, curriculum and instruction, personnel preparation, and parent and community involvement;

3. Procedures for the early and on-going screening, referral, identification and placement of gifted students; beginning with kindergarten through secondary graduation twelfth-grade in at least one of the four defined areas of giftedness; a general intellectual

or a specific academic aptitude program; and, if provided in the school division, procedures for the screening, referral, identification, and placement of gifted students in visual and performing arts or career and technical aptitude programs;

4. A procedure for ~~notifying~~ written notification of parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission of parents or legal guardians prior to placement of ~~students~~ a gifted student in the appropriate ~~program~~ service options;

5. A policy for ~~notifying~~ written notification to parents or legal guardians of identification and placement decisions, including initial changes in placement ~~gifted students' change of placement within, and or exit from the program, which includes an opportunity for parents who disagree with the committee or committees decision to meet and discuss their concern or concerns with an appropriate administrator; Such notice shall include an opportunity for parents or guardians to meet and discuss their concerns with an appropriate administrator and to file an appeal;~~

6. Assurances that student records are maintained according to ~~8VAC20-150-10 et seq., Management of Student's Scholastic Record in the Public Schools of Virginia~~ in compliance with applicable state and federal privacy laws and regulations;

7. Assurances that (i) testing and evaluation assessment materials selected and administered are ~~sensitive to~~ free of cultural, racial, and linguistic ~~differences~~ biases, (ii) identification procedures are constructed so that ~~they~~ those procedures may identify high potential/ability in all underserved ~~culturally diverse, low socio-economic, and disabled populations~~ high potential or aptitude in any student whose accurate identification may be affected by economic disadvantages, by limited English proficiency, or by disability, (iii) standardized tests and other measures have been validated for the ~~specific purpose for which they are used~~ purpose of identifying gifted students, (iv) instruments are administered and interpreted by a trained personnel in conformity with the developer's instructions ~~of their producer~~;

8. A procedure to identify and evaluate ~~student outcomes based on the initial and ongoing assessment of their cognitive and affective needs;~~

~~9.~~ 8. Assurances that accommodations or modifications determined by the school division's special education Individual Education Plan (IEP) team as required for the student to receive a free appropriate public education, shall be incorporated into the student's gifted education services;

9. Assurances that a written copy of the school division's approved local plan for the education of the gifted is available to parents or legal guardians of each referred student, and to others upon request;

10. Evidence that gifted education service options from kindergarten through twelfth grade are offered continuously and sequentially, with instructional time during the school day and week (i) to work with their age-level peers, (ii) to work with their intellectual and academic peers, (iii) to work independently; and (iv) to foster intellectual and academic growth of gifted students. Parents and legal guardians shall receive assessment of each gifted student's intellectual and academic growth;

11. A description of the school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content within programs or courses;

12. Policies and procedures that allow access to programs of study and advanced courses at a pace and sequence commensurate with their learning needs;

13. Evidence that school divisions provide professional development based on the competencies specified in 8VAC 20-542-310, Gifted education (add-on endorsement), for instructional personnel who deliver services within the gifted education program; and

14. Procedures for the annual evaluation of the effectiveness of the school division's gifted education program, including review of student outcomes and the intellectual and academic growth of gifted students. Such evaluations shall be based on multiple criteria and shall include multiple sources of information for gifted students.

~~B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members. This committee shall reflect the ethnic and geographical composition of the school division. The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing through the division superintendent to the school board. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members, who are appointed by the school board. This committee shall reflect the ethnic and geographical composition of the school division. This committee shall have two responsibilities: (i) to review annually the local plan for the education of gifted students, including revisions; and (ii) to determine the extent to which the plan for the previous year was implemented. The findings of the annual program effectiveness and the recommendations of the advisory committee shall be submitted annually in writing to the division superintendent and the school board.~~

C. Each school division shall submit an annual report to the Department of Education in a format prescribed by the Department.

**8VAC20-40-70. Funding. (Repealed.)**

~~State funds administered by the Department of Education for the education of gifted students shall be used to support only those activities identified in the school division's plan as approved by the Board of Education.~~