Board of Education Agenda Item

Item: B. Date: September 25, 2008

Topic: 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.)

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

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

Origin:

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

X Board review required by

X State or federal law or regulation

___ Board of Education regulation

___ Other: __________

X Action requested at this meeting ___ Action requested at future meeting: __________ (date)

Previous Review/Action:

___ No previous board review/action

X Previous review/action dates

October 25, 2006 and September 26, 2007

Action requested at this meeting: __________ (date)

October 25, 2006: Approval of the Notice of Intended Regulatory Action (NOIRA)

September 26, 2007: Approval of the First Review of the Proposed Revisions to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-81-10 et seq.)

Background Information:

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

The current Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-80-10 et seq.) were adopted by the Board of Education on October 19, 2000, and became effective in January 2001. Technical changes proposed by the U.S. Department of Education were approved by the Board of Education on February 5, 2002, and became effective March 27, 2002.
The revision of the state regulations governing special education is required to ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates is required to ensure Virginia’s continued eligibility for federal special education funding, which will total $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

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>WHAT VDOE IS RECOMMENDING</th>
<th>RATIONALE</th>
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<tbody>
<tr>
<td>Parental Consent</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>Administration of the hearing officers system</td>
<td>Retain the 2002 provision for the responsibility of the administration of the special education hearing officers system being with the Supreme Court of Virginia.</td>
<td>To ensure that there be no appearance of impropriety.</td>
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<td>65-day timeline commencement date</td>
<td>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.</td>
<td>To retain the LEA’s responsibility for ensuring the completion of the evaluation-eligibility process in a timely manner.</td>
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<tr>
<td>Eligibility criteria</td>
<td>Revise language regarding:</td>
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<td>• the eligibility criteria for the disability categories, particularly autism; and,</td>
<td>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”.</td>
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<td>• school personnel “identify”; not “diagnose”.</td>
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<td>Terms: mental retardation; emotional disturbance</td>
<td>Revise terms “mental retardation” and “emotional disturbance” to “intellectual disability” and “emotional disability”.</td>
<td>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.</td>
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<td>Functional behavioral assessment</td>
<td>Expand the term and application of “functional behavioral assessment”.</td>
<td>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</td>
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<tr>
<td>Topic</td>
<td>Proposal</td>
<td>Purpose</td>
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<td>Child Find (Child Study)</td>
<td>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.</td>
<td>To provide sufficient structure to the child find process, while allowing LEAs maximum flexibility of responding to children’s educational needs.</td>
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<tr>
<td>IEP Progress Reports</td>
<td>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.</td>
<td>To clarify when progress reports are to be provided to parents.</td>
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<td>IEP (short-term objectives; benchmarks)</td>
<td>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.</td>
<td>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.</td>
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<td>Secondary Transition</td>
<td>Revise the provisions for secondary transition to differentiate the requirements for 14 and 16 years olds.</td>
<td>To clarify the LEA’s responsibilities for these age groups.</td>
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<td>Discipline</td>
<td>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.</td>
<td>To identify mechanisms available to school administrators in making these decisions.</td>
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<td>Due Process</td>
<td>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.</td>
<td>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.</td>
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<td>Due Process</td>
<td>Expand the right to raise additional issues during a due process hearing to the parent when the parent is not the initiating party.</td>
<td>To level the playing field for parents, instead of applying the federal mandate only to LEAs.</td>
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<td>Due Process</td>
<td>Add provisions related to VDOE’s responsibility for recertifying special education hearing officers and the criteria related to that process.</td>
<td>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</td>
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<tr>
<td>Topic</td>
<td>Recommendation</td>
<td>Reason</td>
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<td>Surrogate Parents</td>
<td>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.</td>
<td>To ensure consistency with the requirements under parental consent.</td>
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<td>Local Advisory Committee</td>
<td>Add a provision for the LAC composition to include one teacher as a voting member.</td>
<td>To balance the composition of the LAC.</td>
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<td>IEP Meetings</td>
<td>Remove the provision that an LEA may refuse a request for an IEP meeting that the LEA considers unreasonable.</td>
<td>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.</td>
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<td>LEA Accountability for child’s progress toward meeting IEP goals</td>
<td>Remove the provision that LEAs are not held responsible if the child fails to achieve the growth projected through the annual goals.</td>
<td>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.</td>
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<td>Developmental Delay</td>
<td>Retain the proposed 2007 draft language that mandates the age range for children with developmental delay be 2 through 5, inclusive.</td>
<td>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.</td>
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<td>Discipline - Requisite timeframe to conduct</td>
<td>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 discipline.</td>
<td>This provision mirrors the federal regulations in deleting the previous requirement that a FBA be completed.</td>
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<td>functional behavioral assessment</td>
<td>triggered by the 11th 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.</td>
<td>child’s disability and the disciplinary incident.</td>
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</table>
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

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

* Denotes a substantive change.

<table>
<thead>
<tr>
<th>Section number</th>
<th>Requirement at proposed stage</th>
<th>What has changed</th>
<th>Rationale for change</th>
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<tbody>
<tr>
<td>8 VAC 20-81 et seq.</td>
<td>* References regarding the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H).</td>
<td>Deleted all references to VSDB-H, and made necessary grammatical changes, resulting from the deletions.</td>
<td>The Board of Education officially closed VSDB-H on July 1, 2008.</td>
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<td>The term “mental retardation”</td>
<td>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.</td>
<td>This revision was made in response to actions taken during the 2008 Session of the Virginia General Assembly, and significant public comment.</td>
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<td>The term “LEA”</td>
<td>All references to “LEA” were changed to “local educational agency.”</td>
<td>The revision was made for consistency.</td>
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<td>Citations, cross-references, and typographical errors</td>
<td>Throughout the document, as appropriate, citations and cross-references were corrected or added, and typographical errors were addressed.</td>
<td>The revisions were made to ensure clarity, correct typographical errors, and to comply with guidance from US DOE.</td>
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<tr>
<td>Foreword</td>
<td>4th paragraph Deleted “These references are found in the right margin.”</td>
<td>Stylistic change.</td>
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<td>6th paragraph Corrected included telephone number.</td>
<td>Correct typographical error.</td>
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<tr>
<td>Preamble</td>
<td>Preamble A new paragraph was added to the end of the preamble, expanding then language regarding the purpose of these regulations.</td>
<td>A public comment noted the need for additional language to provide an overview of the regulations and to clarify their purposes.</td>
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<td>8 VAC 20-81-10</td>
<td>* Definition of “Alternate assessment”</td>
<td>Added language: “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….”</td>
<td>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.</td>
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<td>* Definition of “Autism”</td>
<td>“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.”</td>
<td>To comply with the federal regulatory requirement.</td>
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<td>* Definition of “Change in placement”</td>
<td>Inserted: “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.”</td>
<td>In response to public comments, the change was added for clarity.</td>
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<td>* Definition of “Child with a disability”</td>
<td>Inserted: “This also includes developmental delay if the LEA recognizes this category as a disability in accordance with 8 VAC 20-81-80 N.3.”</td>
<td>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.</td>
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<td>* Definition of “Cognitive disability”</td>
<td>Deleted the term and the definition.</td>
<td>Given the change from “mental retardation” to “intellectual disability,” this term, and its cross-reference to “mental retardation” is no longer necessary.</td>
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<td>* Definition of “Comprehensive Services Act” (CSA)</td>
<td>Revised definition to state that the CSA “establishes the collaborative administration and funding system that addresses and funds for services for certain at-risk youths”</td>
<td>Revised to comply with the language and intent of the CSA.</td>
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<td>* Definition of “Dangerous weapon”</td>
<td>Revised the language: “does not include a pocket knife with a blade of less than 2 ¼ 3 inches in length.”</td>
<td>The revision is to comply with the <em>Code of Virginia</em>, which is more stringent than the standard of 2 ½ inches, which is included in federal law.</td>
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<tr>
<td>Definition of “Free appropriate public education” (FAPE)</td>
<td>Inserted language: FAPE means special education and related services that “Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia”.</td>
<td>The revision was made to comply with federal regulatory language.</td>
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<td>* Definition of “Functional behavioral assessment” (FBA)</td>
<td>Inserted language that a FBA “may be include a review of existing data or new testing data or evaluation as determined by the IEP team.”</td>
<td>In response to public comments, the change was added for clarify that an FBA could include the completion of a new evaluation.</td>
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<td>* Definition of “Impartial special education hearing officer”</td>
<td>Inserted a definition of the term, which “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.”</td>
<td>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.</td>
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<td>* Definition of “Implementation plan”</td>
<td>Reinserted the term with a revised definition, noting the term “means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.”</td>
<td>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.</td>
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<td>* Definition of “Interpreting services”</td>
<td>Revised the definition to note that it includes “cued speech/language transliteration services” and to indicate that “interpreting services” includes interpreting services for children who are deaf-blind. Also inserted: “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.”</td>
<td>In response to public comments, the changes were added for clarity, including which students are eligible to receive interpreting services.</td>
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<td>* N/A</td>
<td>Inserted new definition for “Long-term placement,” which states, “‘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.”</td>
<td>In response to public comments, changes were added to 8 VAC 20-81-30. For clarity, a new definition was also inserted.</td>
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<td>Definitions:</td>
<td>Inserted language: “NIMAS’ means the standard established by the United States Secretary of Education to be used in the preparation of electronic files…”</td>
<td>Language to comply with federal regulatory requirements.</td>
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<td>“Orthopedic impairment”</td>
<td>Reinserted “that adversely affects a child’s educational performance” into the definitions for each of these terms.</td>
<td>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.</td>
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<td>“Other Health Impairment”</td>
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<td>“Traumatic Brain Injury”</td>
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<td>* Definition of “Parent”</td>
<td>Inserted: “Parent” may also mean “A minor who is emancipated under § 16.1-333 of the Code of Virginia.” Inserted: “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</td>
<td>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</td>
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<td>* Definition of “Psychological services”</td>
<td>marriage record, and thus, assume responsibilities of 'parent' under this chapter.</td>
<td>permitted all rights and protections under IDEA, which are typically afforded to the parent of a child with a disability.</td>
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<td>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, direct observation, and behavioral evaluations.</td>
<td>Language added to comply with the federal definition of the term.</td>
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<td>* Definition of “Related services”</td>
<td>Inserted language to clarify that “related services” includes “early identification and assessment of disabilities in children”.</td>
<td>Language added to comply with the federal definition of the term.</td>
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<td>* Definition of “Social work services in Schools”</td>
<td>Inserted: “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.”</td>
<td>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.</td>
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<td>Definition of “Special education hearing officer”</td>
<td>The term has the same meaning as the term “impartial hearing officer” as that term is used in IDEA and its federal implementing regulations.</td>
<td>Added the word “impartial” to align with federal terminology.</td>
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<td>* Definition of “Specific Learning Disability”</td>
<td>Reinserted the term “emotional disabilities”: “Specific learning disability does not include learning problems that are primarily the result of ...of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage.</td>
<td>The term was inadvertently deleted from the definition of “Specific Learning Disability” in the proposed regulations.</td>
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<td>8 VAC 20-81-20</td>
<td>* Subsection 1. e. stated, “Are in special education and related services....”</td>
<td>“Are in receiving special education and related services....”</td>
<td>As noted in public comments, special education and related services are services and not a location.</td>
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<td>* 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….”</td>
<td>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 the areas served by the local educational agency….”</td>
<td>Language inserted to comply with the federal regulatory requirements.</td>
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<td>* 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.”</td>
<td>Replaced subsection 7 with new language: “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.”</td>
<td>Language revised to comply with federal regulatory requirements.</td>
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<td>* Subsection 11 outlines VDOE’s responsibilities to ensure LEAs comply with state and federal laws and regulations regarding special education.</td>
<td>Revised 11 a to state, “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.”</td>
<td>In response to public comments, the Supreme Court of Virginia will continue to administer the due process hearing system.</td>
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<td>* Subsection 23 outlines VDOE’s responsibilities relative to collecting Child Count data.</td>
<td>Revised language: “Report and certify annually to the United States Department of Education the number of children with disabilities…on any date between October 1 and December 1 of each year determined by the Superintendent of Public Instruction or designee.”</td>
<td>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.</td>
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<td>* Subsections 24 and 25 outline VDOE’s responsibilities regarding overidentification and disproportionality.</td>
<td>Language was inserted into 24 a and 25: “24. Ensure that a practical method is developed and implemented… with respect to: 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, &quot;Child with a disability&quot;; … 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: a. Reviews review and, if appropriate, revises provide for the revision of the policies, procedures, and practices used by the local educational agency…. b. Requires require… c. Requires require…</td>
<td>Based on guidance from US DOE, the language was modified to more closely align with federal regulatory requirements.</td>
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<td>Subsection 28 outlines VDOE’s responsibilities regarding if it provides direct services to children with disabilities.</td>
<td>Revised 28 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 8 VAC 20-81-260.</td>
<td>This revision is made to align with federal regulatory requirements. Inadvertently, the correction was not included in the proposed regulations.</td>
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<td>8 VAC 20-81-30</td>
<td>* N/A</td>
<td>Inserted a new provision in subsection C: “Every child with a disability is deemed to reside in a school division when:… 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</td>
<td>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...</td>
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<td>$16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor’s marriage record.</td>
<td>* 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.</td>
<td>emancipated in accordance with the <em>Code of Virginia</em>.</td>
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<td>* 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.”</td>
<td>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, 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.”</td>
<td>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.</td>
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<td>* N/A</td>
<td>Inserted a new provision in subsection E: “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.”</td>
<td>As noted above, in response to public comments, the phrase “unless the adult child is in a state-operated program” was deleted. The additional revision was made to comply with the <em>Code of Virginia</em> and to mirror the current provision.</td>
<td>The new provision was added to clarify which LEA is responsible for FAPE given this non-educational placement option is expanding in Virginia.</td>
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<td>8 VAC 20-81-40</td>
<td>* 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.”</td>
<td>Deleted language: “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.”</td>
<td>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.</td>
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<td>8 VAC 20-81-40</td>
<td>* Subsection E outlined the requirements for Educational interpreting services.</td>
<td>The subsection was revised as follows: 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 ...(VQAS) Level III, or (2) a passing score on the...</td>
<td>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.</td>
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<td>(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 (National Interpreter 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. 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.</td>
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<td>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…(TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</td>
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<td>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).</td>
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<td>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:</td>
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<td>a. Personnel shall have a valid</td>
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<td>Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or</td>
<td>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.</td>
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<td>3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:</td>
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<td>a. Personnel providing educational interpreting services for children using sign language shall hold</td>
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<td>(1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or</td>
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<td>(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.</td>
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<td>(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.</td>
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<td>(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.</td>
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<td>b. Personnel providing</td>
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<td>8 VAC 20-81-50</td>
<td>* Subdivision A 3 f: &quot;f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as...&quot;</td>
<td>Revised subdivision A 3 f: &quot;f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as...&quot;</td>
<td>Upon guidance from US DOE, revisions made to comply with federal regulatory requirements.</td>
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<td>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.</td>
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- 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.
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<td>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.&quot;</td>
<td>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.&quot;</td>
<td>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.</td>
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<td>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.</td>
<td>1. The local school division's procedures shall ensure that if a child received early intervening services and/or other scientific research-based interventions, these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such procedures shall include: a. tracking and reviewing timelines; b. instructions on maintaining data-based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and c. written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or...</td>
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<tr>
<td>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.</td>
<td>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...</td>
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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.

1. The local school division’s procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.

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

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; -90;

(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.

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.

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.

through a screening process, or by school staff, the parent(s), or other individuals.
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<td>administrator or designee for an evaluation to determine if the child needs special education and related services.</td>
<td>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.</td>
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<td>5. Timelines for Referral Process</td>
<td>a. The team shall meet within 10 business days following the receipt of the referral.</td>
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<td>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.</td>
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<td>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.</td>
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<td>6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.</td>
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<td>8 VAC 20-81-60</td>
<td>* 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.</td>
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<td>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:</td>
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<td>Revised 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, or a school-based team in accordance with 8VAC20-81-50 5.b. …</td>
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<td>Insert new subdivision A 3: 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</td>
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|                |                               | b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.; or  
|                |                               | c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170. | 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. |
|                |                               | 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 The special education administrator, or designee, shall:  
|                |                               | * 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.”  
|                |                               | Revised 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 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.”  
|                |                               | * N/A 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:  
|                |                               | ...(4) Whether the child needs or continues to need special education and related services;…..”  
|                |                               | Revised to comply with federal regulatory language.  
|                |                               | Subdivision F 5:  
|                |                               | “5. Requirements if additional data are not needed:  
|                |                               | a. If the team determines that no additional data are needed to determine  
|                |                               | Deleted language as subdivision F 5, and inserted the same language as a new subdivision B 4.  
<p>|                |                               | The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B. |</p>
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<td>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.</td>
<td>Revised subsection C: 1. Tests 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. Each assessment and other evaluation materials shall be provided and administered in the</td>
<td>Based on guidance from US DOE, the language in subsection C was revised to comply with federal regulatory requirements.</td>
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<td>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.</td>
<td>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;</td>
<td>In response to public comment, revisions were made to clarify each LEA’s responsibilities relative to the provision of evaluation reports.</td>
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<td>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.</td>
<td>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.</td>
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<td><strong>Subsection D:</strong> &quot;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.&quot;</td>
<td><strong>D. A written copy of the evaluation report(s) 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.</strong></td>
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<td>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.</td>
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<td>Subdivisions F 3, F 4, and F 6: “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 replaced previous subdivision F 3 with the following: “The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section.” Deleted subdivisions F 4 and F 6.</td>
<td>The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.</td>
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appropriate follow the provisions of subsection B. of this section, in determining:

a. whether the child continues to have a disability;

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

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

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

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.

…

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

* Subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the receipt of the"

Revised subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent’s consent to the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of
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<td>8 VAC 20-81-80</td>
<td>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....”</td>
<td>Revised subsection C: “…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....”</td>
<td>This section was substantially revised  • To comply with federal regulatory requirements;  • To comply with public comment; and  • To provide clarification.</td>
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In addition, references to the DSM were deleted, and language, which previously implied that school personnel could “diagnose” children with disabilities, was removed.

8 VAC 20-81-80

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

   b. The local educational agency shall:
      (1) Have at least one member of the eligibility team conduct an observation of the child’s academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been

   Revised subdivision D 3 through D 5:

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

   b. The local educational agency shall:
      (1) Have at least one member of the eligibility team conduct an observation of the child’s academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.
      (2) Ensure that the child is observed in the child’s learning environment (including the general education classroom setting) to document the child’s academic performance and behavior in the areas of
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<td>obtained, consistent with the requirements of 8 VAC 20-81-170. (2) Ensure that the child is observed in the child’s learning environment (including the general education classroom setting) to document the child’s academic performance and behavior in the areas of difficulty. (3) Include information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation.</td>
<td>(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.</td>
<td>b. The eligibility group, in determining whether a child is a child with a disability shall:</td>
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<td>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: a. Lack of appropriate instruction in reading... b. lack of appropriate instruction in math; or c. limited English proficiency.</td>
<td>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: a. Lack of appropriate instruction in reading... b. lack of appropriate instruction in math; or c. limited English proficiency.</td>
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<td>5. The documentation of the determination of eligibility shall include a statement of:... 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.... f. For identification of learning disabilities, whether there are difficulty.</td>
<td>5. The documentation of the determination of eligibility shall include a statement of:... 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.... f. For identification of learning disabilities, whether there are difficulty.</td>
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<td>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 shall include a statement of:... e. The instructional strategies</td>
<td>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 shall include a statement of:... e. The instructional strategies</td>
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<td>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.&quot;</td>
<td>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. …</td>
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<td>f. For identification of a child with a specific learning disabilities, 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</td>
<td>(1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or</td>
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<td>(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.</td>
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<td>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.</td>
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* 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 child can meet the educational standards within the jurisdiction of the public agency that apply to all children."

Revised 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 child can meet the educational standards within the jurisdiction of the public agency that apply to all children."
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<td>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.</td>
<td>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.</td>
<td>In response to significant public comment, all Virginia-specific parental</td>
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<td>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.</td>
<td>H. For all children suspected of having a disability, local educational agencies shall:</td>
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<td>* Subsections L through S:</td>
<td>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</td>
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<td>Outlined eligibility criteria for each of the following eligibility categories:</td>
<td>2. have documented evidence that by reason of the disability, the child needs special education and related services.</td>
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<td>• Autism</td>
<td>I. The Virginia Department</td>
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<td>• Deafness</td>
<td>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.</td>
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<td>• Developmental Delay</td>
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<td>• Hearing Impairment</td>
<td>Revised subsections J through W:</td>
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<td>• Intellectual Disability</td>
<td>Substantially redrafted eligibility criteria for each of the previously drafted categories, and inserted new criteria for each of the following:</td>
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<td>• Other Health Impairment</td>
<td>• Deaf-Blindness</td>
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<td></td>
<td>• Specific Learning Disability</td>
<td>• Emotional Disability</td>
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<td>• Speech-Language Impairment</td>
<td>• Multiple Disabilities</td>
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<td></td>
<td>• Visual Impairment</td>
<td>• Orthopedic Impairment</td>
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<td>• Traumatic Brain Injury</td>
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8 VAC 20-81-90 | A. A local educational agency shall evaluate a child with a disability in | A. Termination of a child's eligibility for special education and related |  |
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<td>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.</td>
<td>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. 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.</td>
<td>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.</td>
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<td>B. The IEP Team shall terminate the child's eligibility for special education and related services in the following areas:</td>
<td>3. Evaluation is not required...</td>
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<td>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.</td>
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<td>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.</td>
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<td>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.</td>
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<td>C. Written parental consent shall be required prior to any partial or complete termination of services.</td>
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<td>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.</td>
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<td>E. If the parent(s) revokes 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.</td>
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<td><strong>8 VAC 20-81-100</strong></td>
<td>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….</td>
<td>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…</td>
<td>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.”</td>
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<td>N/A</td>
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<td>Inserted into Subsection H a cross-reference to 8 VAC 20-81-130 A 2.</td>
<td>Revisions made in response to public comment.</td>
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<td><strong>Subdivision I 4:</strong></td>
<td>“4. …The local educational agency responsible…shall ensure that the child receives appropriate physical education services in compliance with subdivision 3. of this subsection.”</td>
<td>Revised 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.”</td>
<td>Revision made to comply with the federal regulatory requirement.</td>
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<td><strong>Subsection L outlines requirements regarding “Length of School Day”</strong>.</td>
<td>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.”</td>
<td>This long-standing VDOE interpretation was inserted for clarity.</td>
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<td><strong>Subdivision M 1:</strong> VDOE “may use whatever state, local, federal, and private sources of support are available….”</td>
<td>Revised subdivision M 1: VDOE “may use whatever state, local, federal, and private sources of support that are available….”</td>
<td>Word inserted to mirror federal regulatory language.</td>
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<td>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.”</td>
<td>“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.”</td>
<td>response to public comment. The revised provision mirrors Virginia’s current regulatory requirement.</td>
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<td>Deleted the subdivision.</td>
<td>Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.</td>
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<td>* Subdivision B 7:</td>
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<td>“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….”</td>
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<td>Deleted the subdivision.</td>
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<td>* Subdivision B 8 a:</td>
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<td>“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.”</td>
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<td>Revised subdivision C 4:</td>
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<td>“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.”</td>
<td>“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.”</td>
<td>Revisions made to clarify federal regulatory requirements.</td>
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<td>Cross-references</td>
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<td>a (3)</td>
<td>“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.”</td>
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<td>b (1)</td>
<td>“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.”</td>
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<td>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 under subdivision C.1.f. of this section.”</td>
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<td>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 under subdivision C.4. of this section.”</td>
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<td>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 sent to the parent(s) and any responses received; or</td>
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<td>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 (written, electronic, or facsimile) sent to the parent(s) and any responses received; or</td>
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<td>Entire subdivision deleted from this section and reinserted at to 8 VAC 20-81-170 J.</td>
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<td>Entire subdivision deleted from this section and reinserted at to 8 VAC 20-81-170 J.</td>
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<td>In response to public comment, language inserted for clarification.</td>
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<td>In response to public comment, language inserted for clarification.</td>
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<td>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.</td>
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<td>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.</td>
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<td>Revisions made in response to public comments.</td>
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<td></td>
<td>Inserted new subdivision in F 2:</td>
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<td>Revised these sections in...</td>
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<td>2. The IEP team also shall: ...</td>
<td>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, ...; and g. Consider whether the child requires assistive technology devices and services.</td>
<td>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.</td>
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</table>

* 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.”

Subdivision G 3: “3. If determined appropriate by the IEP team as outlined in F 2 of this section, 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. 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. a. The IEP team shall document its consideration of the inclusion in the child’s IEP of benchmarks or short-term objectives.”

* 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 child.”

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, 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.”

Language was inadvertently omitted from the proposed regulations, and reinserted to comply with federal regulatory provisions.
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<td>Revised subdivision G 6:</td>
<td>Word inserted into subdivision G 6 a to comply with federal regulatory requirements.</td>
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<td>“a. A statement of any individual appropriate accommodations or modifications that are necessary…</td>
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<td>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:</td>
<td>Revisions to G 6 b through G 6 e were made to comply with federal regulatory requirements.</td>
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<td>(1) Why that assessment is not appropriate for the child;</td>
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<td>(2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment;</td>
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<td>(3) How the child’s nonparticipation in the assessment will impact the child’s…</td>
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<td>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;</td>
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<td>d. A statement of any individual accommodations or modifications…;</td>
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<td>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</td>
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<td>Revised subdivision G 6:</td>
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<td>“a. A statement of any individual appropriate accommodations or modifications that are necessary…</td>
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<td>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:</td>
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<td>(1) Why that assessment is not appropriate for the child the child cannot participate in the regular assessment;</td>
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<td>(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</td>
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<td>(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.</td>
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<td>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;</td>
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<td>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;</td>
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<td>e. If the IEP team determines that the child will not participate in must take an alternate assessment</td>
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<td>instead of a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</td>
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<td>(1) Why that assessment is not appropriate for the child; the child cannot participate in the regular assessment;</td>
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<td>(2) How the child will be assessed; (\text{Why the particular alternate assessment selected is appropriate for the child;}) and</td>
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<td>(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.</td>
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<td>Instead of</td>
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<td>a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</td>
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<td>(1) Why that assessment is not appropriate for the child; the child cannot participate in the regular assessment;</td>
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<td>(2) How the child will be assessed; (\text{Why the particular alternate assessment selected is appropriate for the child;}) and</td>
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<td>(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.</td>
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<td>* Subdivision G 7:</td>
<td>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.</td>
<td>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. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.”</td>
<td>As a result of significant public comment, language was inserted for clarity. The new language reflects the current Virginia regulatory requirement.</td>
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<td>* Subdivision G 8 b:</td>
<td>“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.”</td>
<td>Revised subdivision G 8 b: “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.”</td>
<td>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...</td>
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<td>* Subdivision G 10:</td>
<td>“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</td>
<td>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 thereafter, the IEP shall...</td>
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<td>determined appropriate by the IEP team, and updated annually, the IEP shall include: (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; (2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and (3) A statement, if appropriate, of interagency responsibilities or any needed linkages. b. For a child pursuing a modified standard diploma, the IEP team shall consider the child’s need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer. c. Transition services shall be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.</td>
<td>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.</td>
<td>providing transition services to a child with a disability at age 14 versus age 16.</td>
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* 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”

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 and parent(s) have...”

Revised in response to public comment.
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<td>8 VAC 20-81-120</td>
<td>Subdivisions A 2 through A 4:</td>
<td>Revised subdivisions A 2 through A 4:</td>
<td>In response to public comment, reinserted all Virginia-specific parental consent requirements, including those relative to children with disabilities who transfer.</td>
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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:

   a. adopts the child’s IEP from the previous local educational agency; or

   b. conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this chapter.

3. The local educational agency may develop and implement an interim IEP while obtaining and reviewing whatever information is needed to develop a new IEP.

4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.

   a. The parent(s) or local educational agency may

   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.

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 parent(s) or local...
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| 8 VAC 20-80-130| 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. ...” | Revised subdivision A 1 a: “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....” | Revisions were made in response to public comment to:  
- clarify that the provisions regarding LRE apply to preschool students;  
- link the requirements regarding the provision of |

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.  
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, 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.
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<td>N/A</td>
<td>agency shall ensure that a</td>
<td>alternative placements is available</td>
<td>supplementary aids</td>
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<td>continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.&quot;</td>
<td>to meet the needs of children with disabilities, aged two to 21, inclusive, for special education and related services.&quot;</td>
<td>and services in nonacademic settings, which appears in the FAPE section, to similar requirements which appear in this section; and</td>
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<td>Inserted cross-reference to 8 VAC 20-81-100 H. in 8 VAC 20-81-130 A 2.</td>
<td>8 VAC 20-81-10, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.</td>
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<td>Subdivision B 2</td>
<td>“2. The continuum shall: a. Include the alternative placements listed in the term &quot;special education&quot; at 8VAC20-81-10.….</td>
<td>Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term &quot;special education&quot; at 8VAC20-81-10, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.….</td>
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<td>8 VAC 20-80-150</td>
<td>Revised subdivision C 1: 1. Definitions applicable to this subsection. The following definitions are applicable for purposes of this subsection.</td>
<td>Revisions were made to clarify that these definitions apply for purposes of these regulations only.</td>
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<td>* 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.….</td>
<td>Revised subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools and representatives of parents of parentally-placed private schools children with disabilities on how to carry out the child find activities.….&quot;</td>
<td>In response to guidance from US DOE, revisions were made to ensure compliance with federal regulatory requirements.</td>
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<td>* 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.….</td>
<td>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 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.….&quot;</td>
<td>In response to guidance from US DOE, revisions were made to ensure compliance with federal regulatory requirements.</td>
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<td>* Subdivision C 5 a (5): (5) How and when those decisions will be made.</td>
<td>Revised subdivision C 5 a (5): (5) How and when those decisions will be made, including how parents, teachers and private school officials will be informed of the process.</td>
<td>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.</td>
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<td>8 VAC 20-80-160</td>
<td>* 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.” Divided proposed subsection A into subdivisions A 1 and A 3; and inserted new provisions A 2, A 3 a, and A 3 b: “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…. 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.</td>
<td>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.</td>
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<td>* N/A</td>
<td>Inserted new subdivisions in D 6 a: “(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the</td>
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<td>IEP team.</td>
<td>Based upon guidance from US DOE, revised the language to comply with federal regulatory requirements.</td>
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<td>(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”</td>
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<td>Revised subdivision C 5: “a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting…, if:</td>
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<td>(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</td>
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<td>(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</td>
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<td>c. For purposes of this</td>
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<td>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.</td>
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<td>c. For purposes of this</td>
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<td>3b. For purposes of this part, ‘weapon,’ ‘controlled substance; and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</td>
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<td>part, ‘weapon,’ ‘controlled substance,’ and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</td>
<td>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 substantially likely to result in injury to self or others.”</td>
<td>The word was inadvertently omitted from the proposed regulations, and was inserted based on public comments, and to comply with federal regulatory requirements.</td>
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<td>8 VAC 20-81-170</td>
<td>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”</td>
<td>Revised subdivision B 3 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 the child; and”</td>
<td>Language was revised for clarity.</td>
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<td>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.</td>
<td>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 because of a violation of a code of student conduct.</td>
<td>Language inserted for clarity.</td>
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<td>* Subsection E regarding parental consent.</td>
<td>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.</td>
<td>In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.</td>
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<td>* 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;”</td>
<td>Revised subdivision E 2 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;&quot;</td>
<td>Inserted language was inadvertently omitted from the proposed regulations and was reinserted for clarity.</td>
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<td>*</td>
<td>Subdivision E 8 b: “8. To meet the reasonable measures requirement of this section, …</td>
<td>Revised subdivision E 8 b: “8. To meet the reasonable measures requirement of this section, … &lt;br&gt;b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; and”</td>
<td>In response to public comment, language inserted for clarity.</td>
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<td></td>
<td>b. Copies of correspondence sent to the parent(s) and any responses received; and”</td>
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<td>* 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.”</td>
<td>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 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.”</td>
<td>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.</td>
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<td>*</td>
<td>N/A</td>
<td>Inserted new subdivision G 5 c: “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.”</td>
<td>Language inserted to comply with federal regulatory requirements.</td>
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<td>*</td>
<td>N/A</td>
<td>Inserted new language in subdivision G 9 regarding hearing procedures: “a. The local educational agency may: &lt;br&gt;(1) develop local procedures for such a hearing process; or &lt;br&gt;(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 G.”</td>
<td>Language inserted for clarity.</td>
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<td>*</td>
<td>N/A</td>
<td>Inserted new subdivision G 11 b: “b. Each local educational agency shall ensure that electronic</td>
<td>Language inserted in response to public comments.</td>
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<td>* N/A</td>
<td></td>
<td>Deleted language from proposed 8 VAC 20-81-110 E 6, and reinserted into new subsection J. in this section.</td>
<td>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.</td>
</tr>
</tbody>
</table>

In addition, modified language, as outlined below:

**J. Audio and video recording.**

1. The local educational agency shall permit the use of audio recording devices at IEP 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 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. …

2. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:

   a. video recording devices at **IEP meetings convened pursuant to this chapter**; or

   b. Audio or video recording devices at meetings other than 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.

3. These policies shall: …

8 VAC 20- * Subdivision B 2: Revised subdivision B 2: Revisions were made in
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<tr>
<td>80-180</td>
<td>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.</td>
<td>2. The local educational agency shall include a statement on the IEP...that the student and parent(s) have been informed of the rights that will transfer to the student on reaching the age of 18.</td>
<td>response to public comments.</td>
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<tr>
<td>8 VAC 20-81-190</td>
<td>* 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.”</td>
<td>Revised subsection A: Requires that each LEA inform parents “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.”</td>
<td>Based on guidance from US DOE, language was inserted to clarify the exact language of the federal statute and regulations.</td>
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<td>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...;”</td>
<td>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 the Virginia Department of Education is providing direct services to a child...;”</td>
<td>Language was changed for clarity.</td>
</tr>
<tr>
<td>8 VAC 20-81-200</td>
<td>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.”</td>
<td>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 completing the investigation within the 60 day regulatory timeline 60 calendar days.”</td>
<td>Language was changed for clarity.</td>
</tr>
<tr>
<td>8 VAC 20-81-210</td>
<td>Subsection A: “The Virginia Department</td>
<td>Revised subsection A: “The Virginia Department of</td>
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<td>Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:”</td>
<td>Education administers a provides for an impartial special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:”</td>
<td>Based on significant public comment and to avoid even the appearance of impropriety, the Supreme Court of Virginia will continue to 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.</td>
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<td>*</td>
<td>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.</td>
<td>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.</td>
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<td>* N/A</td>
<td>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.”</td>
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<td>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.</td>
<td>Deleted subdivisions B 1 through B 3. Inserted new subsection 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.” 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</td>
<td>Based on guidance from the Office of the Attorney General, language regarding VDOE’s certification process for Special Education Hearing Officers was inserted.</td>
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<td>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. Proposed subdivision B 4 has been retained as C 4.</td>
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<td>* Subdivision D 1:</td>
<td>“A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education.”</td>
<td>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. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.”</td>
<td>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.</td>
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<td>Subdivision F 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’)</td>
<td>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.</td>
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* 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’)
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<td>request for due process in light of particular facts and circumstances of the case.</td>
<td>request for due process in light of particular facts and circumstances of the case.</td>
<td>Language inserted for clarification.</td>
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<td>Subdivision I 3:</td>
<td>b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).</td>
<td>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), even though the applicable appeal period has expired.”</td>
<td>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.</td>
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<td>* N/A</td>
<td>Inserted new provision L 6: “6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated.”</td>
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<td>Inserted new provision N 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.”</td>
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<td>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.</td>
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<td>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.</td>
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<td>c. The implementation plan:</td>
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<td>(1) must be based upon the decision of the hearing officer.</td>
<td>The language was inadvertently omitted from the proposed language.</td>
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<td>(2) shall include the revised IEP if the decision affects the child’s educational program.</td>
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<td>(3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.</td>
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<td>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 the hearing;”</td>
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<td>Inserted new provision Q 5 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.”</td>
<td>Inserted language based on public comment to ensure uninterrupted and consistent proceedings.</td>
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<td>Subdivision O 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.”</td>
<td>Revisions were made in response to public comments.</td>
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<td>Subdivision P 3 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.”</td>
<td>Language inserted for clarity.</td>
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<td>Inserted new Q 1 e: “The parties may enter into a confidentiality agreement as part of their resolution agreement.”</td>
<td>Language inserted for clarity.</td>
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<td>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.”</td>
<td>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.</td>
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<td>* 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),….”</td>
<td>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 as required to gain parental consent in accordance with the provision in 8VAC20-81-110 E 4),….”</td>
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<td>* N/A</td>
<td>Inserted new R 2 c: “The resolution period is part of, and not separate from, the expedited due process hearing timeline.”</td>
<td>Language inserted for clarity.</td>
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<td>* Subdivision Q 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.”</td>
<td>Subdivision S 1: “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.”</td>
<td>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.</td>
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<td>8 VAC 20-81-220</td>
<td>* Subdivision B 1 a: “The biological parent(s) are allowing relatives…to act as a parent;”</td>
<td>Revised subdivision B 1 a: “The biological parent(s) are allowing relatives…to act as a parent;”</td>
<td>The provision applies to all individuals meeting the definition of “parent,” not just “biological parent.”</td>
</tr>
<tr>
<td>* Subdivision B 2: “The local educational agency shall appoint a surrogate parent for a child, aged two to 21,”</td>
<td>Subdivision B 2: “Unless one of the exceptions outlined in subdivision B.1. of this section applies, the local educational agency shall appoint a</td>
<td>In response to public comment, revised language to indicate that if a child with a disability is either an</td>
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|                | 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.  
* Subdivision B 5:  
  “The local educational agency shall establish procedures for determining whether a child needs a surrogate parent.”  
* Subdivision B 7:  
  outlined that a surrogate parent’s appointment may be terminated if:  
  “The child is found no longer eligible for special education services;”  
|                | 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 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.  
* Subdivision C 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.”  
* Subdivision C 3:  
  outlined that a surrogate parent’s appointment may be terminated if:  
  “The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;”  
|                | Reorganized provisions in a new subsection as C 1 through C 3.  
* 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 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.”  
|                | Subdivision C 3 b outlined that a surrogate parent’s appointment may be terminated if:  
  “The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;”  
|                | Revised subdivision B 1 d:  
  “A copy of the local school

8 VAC 20-81-230 | * Subdivision B 1 d:  
  “A copy of the local school

8 VAC 20-81-230 | Revisions made for clarity.  
In response to public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.  
Based on guidance from US DOE, the language was deleted.  
Revisions made to limit unnecessary paperwork.
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| Division's interagency agreement regarding the provision of special education and related services in a regional or local jail...”  
* Subdivision G 2: “A copy of this agreement shall be submitted with the annual plan specified in subsection B of this section.” | Local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail...”  
Subdivision G 2: “A copy of any revisions to this agreement shall be submitted with the annual plan specified in subsection B of this section.” | and to comply with current practice regarding the submission of a LEA’s Annual Plan. |
| * 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.”  
Revised subdivision D 1:  
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.  
c. Additional local school division personnel shall serve only as consultants to the committee. | 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. |
| * Subdivision F 2: “The local school division shall participate in transition planning conferences...in accordance with 34 CFR § 303.148(b).”  
Revised subdivision F 2: “The local school division shall participate in transition planning conferences...in accordance with 34 CFR § 303.148(b) §1437(a)(9) of the Act, and its federal implementing regulations.” | Revisions were made based upon guidance from US DOE. |
| 8 VAC 20-81-250  
* 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.  
Revised Subsection C:  
1. Subject to availability, reimbursement may be made available...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. | Revisions were made to comply with the Virginia Appropriations Act and the Standards of Quality funding formulae. |
| 8 VAC 20-81-300  
Subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public insurance programs in...”  
Revised subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public benefits or insurance programs in...” | Revisions made to comply with federal regulatory requirements. |
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<td>8 VAC 20-81-320</td>
<td>Subdivision C 1: “...having the knowledge and skills to service children with disabilities...”</td>
<td>Revised subdivision C 1: “…having the knowledge and skills to serve children with disabilities...”</td>
<td>Typographical error.</td>
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<td>* Subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child’s IEP.”</td>
<td>Inserted new language in subdivision C 1 b: “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.”</td>
<td>Language inserted to comply with federal regulatory requirements.</td>
</tr>
<tr>
<td>8 VAC 20-81-340</td>
<td>Referenced caseloads for “Severe Disabilities”.</td>
<td>Deleted references to “Severe Disabilities”.</td>
<td>References to “Severe Disabilities” were deleted from other sections of the regulations, but inadvertently were retained in this section.</td>
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<td>Outlined case load standards.</td>
<td>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.</td>
<td>The caseload standards were revised to correct typographical errors. As corrected, the caseload standards mirror current requirements.</td>
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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.

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<tr>
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<tr>
<td>8 VAC 20-80 et seq.</td>
<td>8 VAC 20-81 et seq.</td>
<td>Repealed</td>
<td>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.</td>
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<tr>
<td>Foreword and Preamble</td>
<td>Foreword and Preamble</td>
<td>Repealed</td>
<td>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.</td>
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<tr>
<td>10 Repealed</td>
<td>10 Definitions</td>
<td>Repealed</td>
<td>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. 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;</td>
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| 30 Repealed            | 20 Functions of the Virginia Department of Education | Repealed            | To comply with federal requirements, provisions were included or modified which outline the VDOE’s responsibilities to do the following:  
  - Ensure 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;  
  - Ensure children with disabilities are included in all state-wide and division-wide assessments;  
  - Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children;  
  - Comply with public participation guidelines in the development of policies and procedures;  
  - Supervise educational programs;  
  - Assist LEAs and participating state agencies to ensure state and federal requirements regarding “least restrictive environment” (LRE) are implemented;  
  - Review and evaluate compliance of licensed private nonsectarian special education schools;  
  - Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations;  
  - Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia’s objectives under the “No Child
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<td>Left Behind Act” (NCLB), and address graduation and dropout rates, including performance indicators to assess progress toward achieving these goals;</td>
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<td>• Establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions);</td>
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<td>• Respond to complaints filed by parents regarding staff qualifications;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities;</td>
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<td>• Ensure that if VDOE provides direct services to children with disabilities, it complies with state and federal requirements, as if it is a LEA;</td>
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<td>• 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;</td>
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<td>• Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities;</td>
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<td>• 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</td>
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<td>• Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations.</td>
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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.

In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system
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<td>40 Repealed</td>
<td>30 Responsibilities of local school divisions and state-operated programs</td>
<td>Repealed</td>
<td>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.</td>
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| 45 Repealed            | 40 Special Education Staffing Requirements | Repealed | Provisions were added to require that special education teachers be “highly qualified,” in accordance with the federal special education regulations. For clarity:  
• Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements;  
• A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and  
• The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent.  
To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child’s IEP team, rather than a 5 ½ hour day. |
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<td>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.</td>
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<td>50 Repealed</td>
<td>50 Child find</td>
<td>Repealed</td>
<td>To comply with federal requirements:</td>
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<td>• “Wards of the State” must now be included in each LEA’s child find program;</td>
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<td>• Each LEA’s responsibilities for child find activities relative to parentally-placed private school students were expanded;</td>
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<td>• Screenings for instructional purposes are not considered an evaluation; and</td>
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<td>• 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.</td>
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<td>In accordance with the <em>Code of Virginia</em> and the Board of Education regulations, children must be screened for scoliosis.</td>
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<td>To minimize state regulations that exceed the federal requirements, the following requirements were modified:</td>
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<td>• 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;</td>
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<td>• 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 <em>Code of Virginia</em> and other state regulations; and</td>
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<td>• The Child Study Committee requirements were removed,</td>
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| 52 Repealed            | 60 Referral for initial evaluation        | Repealed           | To comply with federal requirements, the following provisions were added:  
• A referral for an initial evaluation may be made by the VDOE or any state agency;  
• Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments;  
• Exceptions to the 65 business day timeline for the completion of an evaluation; and  
• New parental consent provisions for initial evaluations, including the LEA’s options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances, parental consent is not required for the initial evaluation of a ward of the state.  

To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.  

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. |
| 54 Repealed            | 70 Evaluation and Reevaluation           | Repealed           | To comply with federal requirements, the following provisions were added:  
• The team must review local or state assessments and classroom-based observations;  
• The team must determine what additional data is necessary to determine the child’s educational needs, 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;  
• New requirements regarding the administration of an evaluation in the language and form most likely to yield
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<td>accurate information;</td>
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<td>• A written copy of the evaluation report must be provided at no cost to the parent;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise;</td>
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<td>• 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;</td>
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<td>• The term “test” was replaced with the term “assessment;”</td>
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<td>• Modifications were made to the requirements if additional data is not needed for an evaluation, including:</td>
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<td>➢ 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</td>
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<td>➢ 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.</td>
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<td>For clarity:</td>
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<td>• 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;</td>
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<td>• Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and</td>
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<td>• 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.</td>
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To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified:

• Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with federal regulatory
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<tr>
<td>Repealed</td>
<td>80 Eligibility</td>
<td>Repealed</td>
<td>The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section.</td>
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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.

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.

The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations:

- Required eligibility group considerations;
- Requirements for documenting the eligibility group’s determination of eligibility;
- New required members of the eligibility group; and
- Requirements that as part of the eligibility process, the eligibility group ensure that a child is, or has been, observed in routine classroom instruction.
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<td>For clarity:</td>
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<td>• A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group;</td>
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<td>• The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120; and</td>
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<td>• 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.</td>
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<td>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.</td>
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<td>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.</td>
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<tr>
<td>58 Repealed</td>
<td>90 Termination of special education and related services</td>
<td>Repealed</td>
<td>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.</td>
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<td>For clarity:</td>
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<td>• A provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services;</td>
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<td>• 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</td>
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| 60                     | Repealed                                    | 100 Free appropriate public education | Repealed To comply with federal requirements, the following provisions were added:
• FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential;
• VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015;
• LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C;
• Provisions outlining each LEA’s responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and
• Provisions outlining VDOE’s responsibilities regarding the methods and payments for ensuring children with disabilities are provided with FAPE.

To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each 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.

To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities.

For clarity, inserted:
• 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.
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<td>62 Repealed</td>
<td>110 Individualized education program</td>
<td>Repealed</td>
<td>To comply with federal requirements, the following provisions were added:</td>
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<td>• The LEA’s responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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- 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
- A requirement that the IEP team determines the length of the school day for preschool-aged children with disabilities.
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<td>• Nothing requires the inclusion of information into a child’s IEP beyond what is specifically required;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and</td>
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<td>• 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.</td>
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<td>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.</td>
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<td>To ensure the provision of FAPE to a child with a disability:</td>
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<td>• An IEP must be implemented as soon as possible following receipt of parental consent; and</td>
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<td>• Transition services must be initiated for a student with a disability prior to the child entering secondary school but</td>
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In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members.

For clarity, the following provisions were added:
- If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs;
- The 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;
- 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;
- An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally;
- For a child pursuing a modified standard diploma, the IEP team must consider the child’s need for occupational readiness upon school completion; and
- The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes.

The following provisions were deleted:
- Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child’s caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a “parent;”
- 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
- Former provision 8 VAC 20-80-62 F. 5. f., regarding the Literacy Passport Test, as it is no longer applicable.

In response to public comment:
- 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;
- 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;
- Inserted a requirement that at least one year before a
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<td>N/A</td>
<td>Transfer students</td>
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<td>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</td>
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<td>• 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.</td>
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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.

For clarity, the following provisions have been included:

• If an LEA is not forthcoming in the provision of a child’s educational records, VDOE may be contacted for assistance;
• If the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting, pending an evaluation, if an evaluation is necessary;
• The LEA may develop and implement an interim IEP while obtaining and reviewing the information needed to develop a new IEP;
• If 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;
• If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and
• To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA’s responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition
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| 64 Repealed            | 130 Least restrictive environment and placements | Repealed           | To comply with federal requirements:  
- Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities;  
- LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child’s IEP team to participate in nonacademic settings. A cross-reference to 8 VAC 20-81-100 H. was inserted; and  
- Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities.  
Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include “integrated service delivery.”  
For clarity:  
- Added language to emphasize that the LRE provisions apply to children with disabilities, aged two to 21; |
| 65 Repealed            | 140 Placement of children at the Virginia schools | Repealed           | 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. |
| 66 Repealed            | 150 Private School Placement                  | Repealed           | To comply with federal requirements, the previous reference to “residential placement” in 8 VAC 20-80-66 A. 1., was modified to reference “a private school or facility.”  
The federal language modified each LEA’s responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, 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:  
- An expansion of the LEA’s child find responsibilities, |
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<td>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;</td>
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<td>• 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;</td>
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<td>• LEAs may supplement, but not supplant, the proportionate share amount of federal funds for the provision of equitable services;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• Following consultation, the LEA must obtain a written affirmation from the private school representatives;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• Services may be provided by LEA employees, or through contract with the LEA;</td>
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<td>• Special education and related services provided to parentally placed private school children with disabilities,</td>
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Discipline procedures

Repealed

The section was revised to comply with federal requirements, including the addition or modification of the following provisions:

- School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct;
- A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year;
- A child with a disability may be removed from their current educational placement to another setting for disciplinary reasons to the extent that the alternatives are applied to children without disabilities;
- The LEA’s responsibilities for providing services to a child with a disability during a short-term removal, including the LEA’s responsibilities to ensure that beginning on the 11th day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student’s IEP goals, and be included in VDOE and division wide assessment programs;
- The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child’s behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis;
- Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child’s disability. Special circumstances now include if the child inflicts serious bodily injury while at school or at a school function;
- The LEA’s responsibilities for providing services to a child with a disability during a long-term removal, including the LEA’s responsibilities to ensure that the student is provided...
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<td>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;</td>
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<td>* 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;</td>
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<td>* 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;</td>
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<td>* 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;</td>
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<td>* 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;</td>
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<td>* Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.;</td>
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<td>* 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;</td>
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<td>* 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</td>
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<td>manifestation of the child’s disability;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• Previous provisions from 8 VAC 20-80-68 C. 9. were deleted; and</td>
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<td>• 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.</td>
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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.

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
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<tr>
<td>70 Repealed</td>
<td>170 Procedural safeguards</td>
<td>Repealed</td>
<td>To comply with federal requirements:</td>
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<td>• 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;</td>
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<td>• 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.;</td>
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<td>• 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;</td>
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<td>• A child’s placement in an IAES placement is an exception to the requirement that IEP teams determine a child’s placement;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• If a Special Education Hearing Officer requests an IEE as part of a due process hearing, it must be at public expense;</td>
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<td>• The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted;</td>
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<td>• 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;</td>
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<td>• The required content of the PSD was modified;</td>
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<td>• The parental consent provisions were modified, including the following:</td>
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<td>➢ Consent is required prior to accessing a child’s public benefits or insurance;</td>
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<td>➢ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services;</td>
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<td>➢ Consent is not required prior to administering a screening to determine appropriate instructional strategies;</td>
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<td>➢ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state;</td>
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<td>➢ A LEA may, but is not required to, use mediation or due</td>
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<td>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;</td>
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<td>➢ 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;</td>
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<td>➢ 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;</td>
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<td>➢ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and</td>
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<td>➢ 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.</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• An LEA must provide the parent a copy of the child’s IEP at no cost; and</td>
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<td>• 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.</td>
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</table>

In accordance with guidance from the U.S. Department of Education and the provisions of the *Code of Virginia*, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. A definition of electronic signature is included.

Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300.
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<th>Current section number</th>
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<th>Current requirement</th>
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<td></td>
<td></td>
<td>Repealed</td>
<td>For clarity:</td>
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<td>• Expanded the provision permitting a hearing to be held to challenge in a child’s education records; and</td>
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<td>• 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.</td>
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<td>In response to public comment:</td>
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<td>• 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;</td>
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<td>• 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</td>
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<td>• Clarified that LEAs must ensure that electronic communications regarding any matter associated with the child be part of the child’s education record.</td>
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<tr>
<td>72 Repealed</td>
<td>180 Transfer of rights to students who reach the age of majority</td>
<td>Repealed</td>
<td>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.</td>
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<td>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</td>
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<tr>
<td>74 Repealed</td>
<td>190 Mediation</td>
<td>Repealed</td>
<td>To comply with federal requirements:</td>
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<td>• 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;</td>
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<td>• VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation</td>
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| 76 Repealed            | 210 Due process hearing                  | Repealed           | To comply with federal requirements, numerous provisions were added, including the following:  
  • Timelines for filing a request for a due process hearing;  
  • The LEA’s authority to use due process to obtain parental consent;  
  • The LEA’s authority to request an expedited due process hearing;  
  • Sufficiency of a due process notice, including the procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied;  
  • The LEA’s responsibility to document reasonable efforts to obtain parental participation in the resolution meeting;  
  • A copy of the PSD must be provided by a LEA upon receipt of the parent’s first request for a due process hearing in a school year;  
  • The qualifications of the Special Education Hearing Officer;  
  • The LEA’s responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C;  
  • An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing;  
  • A Special Education Hearing Officer’s decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met;  
  • The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements;  
  • Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved; |

process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation.  
• Qualified mediators must be trained in effective mediation techniques; and  
• If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements.  
To assist in complying with federal requirements, the following provisions were added:  
• Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and  
• Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.
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<td>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</td>
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<td>The timelines for appealing a due process decision to state or federal court.</td>
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</table>

In compliance with the *Code of Virginia*, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation.

To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted.

To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited.

To ensure the effective and efficient operation of the due process system, the following provisions were added or modified:

- 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;
- If a request for a due process hearing is received solely by VDOE, VDOE will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required;
- Requirements for the duration of the Special Education Hearing Officer's authority were added;
- All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied;
- A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE;
- The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer's 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
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<td>determinations;</td>
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<td>• 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.);</td>
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<td>• 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;</td>
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<td>• The required elements of a due process decision were modified;</td>
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<td>• 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;</td>
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<td>• The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• 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</td>
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<td>• 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.</td>
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<td>To provide clarity:</td>
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<td>• Several provisions were collapsed, including the deletion of the provisions, which previously appeared at I.3.-I.5. were deleted;</td>
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<td>• 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;</td>
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<td>• 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;</td>
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<td>• Indicated that the resolution period is part of, and not</td>
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<tr>
<td>78 Repealed</td>
<td>200 Complaint resolution procedures</td>
<td>Repealed</td>
<td>To comply with federal requirements, the following provisions were added:</td>
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<td>• New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known;</td>
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<td>• 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;</td>
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<td>• The complaint must be simultaneously filed with VDOE and the LEA;</td>
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<td>• 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;</td>
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<td>• VDOE must conduct an investigation which includes a complete review of all relevant documentation; and</td>
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<td>• The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation.</td>
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<td>Repealed</td>
<td>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.</td>
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<td>The requirement that VDOE send written notification of its receipt of a complaint to “other appropriate [VDOE] personnel” was deleted.</td>
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<td>For clarity, the following provisions were added:</td>
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<td>• The LEA’s responsibility to respond after receiving notification of a complaint was added;</td>
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<td>• VDOE’s procedure if a complaint is filed by an individual other than the child’s parent(s) or their legal counsel;</td>
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<td>• VDOE will notify the parties in writing if the timeline for the complaint is extended; and</td>
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<td>• Parties to a complaint may appeal the complaint findings</td>
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<td>within 30 calendar days of the issuance of a decision, in accordance with procedures established by VDOE.</td>
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<td>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.</td>
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<td>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.</td>
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<tr>
<td>80 Repealed</td>
<td>220 Surrogate parent procedures</td>
<td>Repealed</td>
<td>To comply with federal requirements, the following provisions were added:</td>
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<td>• Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state;</td>
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<td>• A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary;</td>
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<td>• A surrogate parent may not be an employee of a LEA; and</td>
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<td>• 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.</td>
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<td>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.</td>
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<td>Based on guidance from US DOE, former provision 8 VAC 20-80-80 C 2 c was deleted.</td>
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<td>To minimize state regulations that exceed the federal requirements:</td>
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<td>• LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed;</td>
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<td>• The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and</td>
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<td>• 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</td>
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| 90 | Repealed | 230 Local educational agency administration and governance | Repealed | To comply with federal requirements, provisions were added which indicate:  
- A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context;  
- A timeline for the LEA’s participation in a transition planning conference for a student transitioning from Part C to Part B;  
- New LEA responsibilities regarding migratory children and early intervening services; and  
- The LEA’s responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA’s option to coordinate with the NIMAC.  
The requirements regarding the LEA’s submission of an annual plan were revised to clarify the LEA’s responsibility. Also, in accordance with federal modifications, LEAs are no longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development.  
The requirements regarding the local advisory committee (LAC) were modified:  
- To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities;  
- To require that the committee include one teacher with any addition LEA personnel serving only serve as consultants; and  
- To clarify the role of the LAC, including in the review of the school division’s annual plan.  
For clarification, a provision was inserted which outlines a LEA’s responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30th. |
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<tr>
<td>100 Repealed</td>
<td>240 Eligibility for funding</td>
<td>Repealed</td>
<td>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.</td>
</tr>
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<td>110 Repealed</td>
<td>250 State funds for local school divisions</td>
<td>Repealed</td>
<td>To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment. To ensure compliance with the Code of Virginia, provisions were expanded that outline VDOE’s obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children’s home. The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education. The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Superintendent of Public Instruction or designee with greater flexibility.</td>
</tr>
<tr>
<td>120 Repealed</td>
<td>260 Federal funds</td>
<td>Repealed</td>
<td>To comply with federal requirements:  • Provisions were added which outline the LEA’s responsibilities regarding the following: Excess costs; Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities;  • Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and  • The language, which previously permitted the awarding of “sliver grants,” was deleted.</td>
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<tr>
<td>130 Repealed</td>
<td>270 Funds to assist state-operated programs</td>
<td>Repealed</td>
<td>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.</td>
</tr>
<tr>
<td>140 Repealed</td>
<td>280 Funding, withholding, and recovery of funds</td>
<td>Repealed</td>
<td>To comply with the Code of Virginia, a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA’s state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related</td>
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<td>Current section number</td>
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<td>services to such children.</td>
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<td>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.</td>
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<td>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.</td>
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<tr>
<td>150 Repealed</td>
<td>290 Appeal of administrative decision regarding funding</td>
<td>Repealed</td>
<td>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. To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.</td>
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<tr>
<td>152 Repealed</td>
<td>300 Use of public and private insurance</td>
<td>Repealed</td>
<td>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.</td>
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<tr>
<td>155 Repealed</td>
<td>310 Attorneys’ fees</td>
<td>Repealed</td>
<td>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.</td>
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<tr>
<td>160 Repealed</td>
<td>320 Additional responsibilities for programs with children with disabilities in residence or custody</td>
<td>Repealed</td>
<td>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.</td>
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<tr>
<td>190 Repealed</td>
<td>330 Compliance with § 504 of the Rehabilitation Act of 1973, as amended</td>
<td>Repealed</td>
<td>To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints. For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA</td>
</tr>
<tr>
<td>Current section number</td>
<td>Proposed new section number, if applicable</td>
<td>Current requirement</td>
<td>Proposed change and rationale</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------------------------------------</td>
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</tr>
<tr>
<td>amended</td>
<td></td>
<td>is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.</td>
<td></td>
</tr>
<tr>
<td>190 Repealed</td>
<td>340 Special Education Caseload Staffing Requirements</td>
<td>Repealed</td>
<td>Deleted references to “Severe Disabilities.”</td>
</tr>
</tbody>
</table>

## 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.
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
Abbreviations for Commenters:

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

* & ** 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

**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
<table>
<thead>
<tr>
<th>Issue</th>
<th>Source</th>
<th>Comments</th>
<th>VDOE Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Return Regulations to VDOE for Revision (22 comments)</td>
<td>1 Att 4 Cit 11 Par 3 SLP 1 Voc</td>
<td>Support returning proposed regulations to VDOE for revisions because of the elimination of many procedural rights contained in the current regulations.</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>1 Par</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>General comments (4 comments)</td>
<td>1 Sped Adm</td>
<td>Requests the State Board of Education accept the proposed regulations.</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>1 Stu</td>
<td>Comments that he wants &quot;to learn to read and work with money.&quot;</td>
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<td></td>
<td>1 Stu</td>
<td>Comments that he is the brother of a child with autism.</td>
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<tr>
<td></td>
<td>1 Stu (Group)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>Paperwork Reduction (7 comments)</td>
<td>2 Sped Adm 2 Sped Tch</td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>1 Brd 1 OT 1 Sped Tch</td>
<td>Support the elimination of unnecessary paperwork.</td>
<td></td>
</tr>
<tr>
<td>Parent Resource Centers (1 comment)</td>
<td>1 Par</td>
<td>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.</td>
<td>VDOE does not believe that the suggested change is in concert with the language of IDEA 2004, and its federal implementing regulations.</td>
</tr>
<tr>
<td>Parent Participation in Process – General (284 comments)</td>
<td>1 Att</td>
<td>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.</td>
<td>VDOE does not believe it is appropriate to regulate an LEA’s policies and procedures regarding classroom observations. The final regulations continue to ensure complete parent participation in the IEP process.</td>
</tr>
<tr>
<td></td>
<td>4 Adv</td>
<td>Oppose any changes that would limit the parent’s right to be a part of the special education team.</td>
<td></td>
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<tr>
<td>Issue</td>
<td>Source</td>
<td>Comments</td>
<td>VDOE Response</td>
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<td></td>
<td></td>
<td>education/IEP process or to provide consent. Rationales:</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Parents need input into the development of their child’s IEP.</td>
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<td></td>
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<td>• Parents need to be partners in the education process since they know their child.</td>
<td></td>
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<td></td>
<td></td>
<td>• 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.</td>
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<td>• It helps to foster the child in reaching his/her potential.</td>
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<td>• To do otherwise, could result in additional costs, including the cost of due process.</td>
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<td>• Removing parental involvement is a denial of FAPE in that it is required by the IDEA.</td>
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<td></td>
<td></td>
<td>• Communication between the school division and the parent needs to be improved, not reduced.</td>
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<tr>
<td></td>
<td>1 Cit</td>
<td>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.</td>
<td></td>
</tr>
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<td></td>
<td>1 Par</td>
<td>Oppose any changes that would remove or limit parent involvement in the child’s education.</td>
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<td></td>
<td>1 Cit</td>
<td>Generally opposed to proposed changes and support retaining existing regulations. Rationales:</td>
<td></td>
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<tr>
<td></td>
<td>1 Par</td>
<td>• Opposed to changes that would reduce services to students with disabilities.</td>
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<td></td>
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<td>• It is a waste of resources to “fix” something that is not “broken.”</td>
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<td></td>
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<td>• Proposed changes would move Virginia “back.”</td>
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<td></td>
<td></td>
<td>• The proposals infringe on the rights of children.</td>
<td></td>
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<td></td>
<td></td>
<td>• Parents are still trying to become acclimated to the current special education process.</td>
<td></td>
</tr>
<tr>
<td>Regulations Revision Process</td>
<td>2 Adv 3 Cit 1 Gen Ed 8 Par 1 Sped Tch</td>
<td>Recommends that VDOE develop and issue a Parent’s Resource Guide to coincide with the release of the regulations.</td>
<td>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 take steps to do so.</td>
</tr>
<tr>
<td>(21 comments)</td>
<td>(15)</td>
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<tr>
<td></td>
<td>1 SSEAC</td>
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<td></td>
<td>(1)</td>
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<tr>
<td>Issue</td>
<td>Source</td>
<td>Comments</td>
<td>VDOE Response</td>
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<tr>
<td>1 Par (1)</td>
<td></td>
<td>Suggests replacing “shall” with “must” to comply with the federal regulations.</td>
<td>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.</td>
</tr>
<tr>
<td>2 Par (2)</td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>1 Par (1)</td>
<td></td>
<td>Recommends the Board of Education consider the impact of the proposed changes on students who receive special education services outside of the school setting.</td>
<td></td>
</tr>
<tr>
<td>1 Cit (1)</td>
<td></td>
<td>Supports all Town Hall comments.</td>
<td></td>
</tr>
</tbody>
</table>

**Alignment with other regulations and statutes** (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. |

<p>| 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. | |</p>
<table>
<thead>
<tr>
<th>Issue</th>
<th>Source</th>
<th>Comments</th>
<th>VDOE Response</th>
</tr>
</thead>
</table>
|       | 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. | |
| Exceeding Federal Regulations  
(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 | |
<table>
<thead>
<tr>
<th>Issue</th>
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<th>Comments</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 LEA</td>
<td>Support revisions that clarify and reinforce IDEA 2004 and generally supports the proposed regulations in that they do not exceed federal regulations.</td>
<td>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 Foreward 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.</td>
</tr>
<tr>
<td></td>
<td>2 Adm</td>
<td>Oppose additional requirements added by Virginia, thus supporting a policy of not exceeding federal laws and regulations.</td>
<td></td>
</tr>
</tbody>
</table>

Foreword Content  
(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.  

1 SSEAC  
(1)  
Expand the Foreward 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 possible.”
<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>1 Sped Adm (1)</td>
<td>Supports the direction taken with the proposed regulations.</td>
<td>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.</td>
</tr>
<tr>
<td>Definitions – Age of Eligibility</td>
<td>1 Sped Adm (1)</td>
<td>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.</td>
<td>Supports the direction taken with the proposed regulations.</td>
</tr>
<tr>
<td>Definitions/Eligibility – Autism</td>
<td>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)</td>
<td>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.</td>
<td>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.” 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.</td>
</tr>
<tr>
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<td>3 Adv 6 AO 2 Att 15 Cit 1 MD 28 Par 1 PT 1 SLP 2 Sped Adm 2 Stu</td>
<td>Suggest amending the definition of autism to use “developmental spectrum 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.</td>
<td>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.</td>
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<td>Creating an advisory group other than the eligibility group to determine autism criteria would be redundant and is not advisable.</td>
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<td>VDOE will recommend to the BOE revised language to enhance clarity of the criteria.</td>
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<td>The federal language regarding “A child who manifests . . .” is included in this provision.</td>
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<td><strong>Definitions - Caseload</strong></td>
<td><strong>8 VAC 20-81-10</strong></td>
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<td><strong>Definitions - Change in Placement</strong></td>
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<td>Definitions - Child Study Committee</td>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>Oppose proposed elimination of child study committee and suggests retaining this definition.</td>
<td>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.</td>
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<tr>
<td>Definitions - Child with a Disability</td>
<td>6 AO 2 Att 9 Cit 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu</td>
<td>Suggest that Developmental Delay and Severe Disabilities be restored and remain as they appear in the current VA regulations and in this definition.</td>
<td>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.</td>
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<tr>
<td>Definitions – Consent</td>
<td>1 Par 1 SLP</td>
<td>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. Opposes changes to the definition of parent consent. Suggests that it remain as it is currently defined.</td>
<td>Consistent with the federal regulations, consent is in writing. Agreement is included since the federal regulations allow for agreement in certain cases.</td>
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<td>Definitions – Consultative Services</td>
<td>1 Par 1 SLP</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>Definitions – Continuum of Services</td>
<td>1 SLP</td>
<td>Suggests that this term be defined in the regulations.</td>
<td>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.</td>
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<tr>
<td>Definitions/Eligibility – Deafness/Hearing Impairment</td>
<td>1 Par (1)</td>
<td>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.</td>
<td>To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included in 8 VAC 20-81-80, &quot;Eligibility,&quot; 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.</td>
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<tr>
<td>Definitions/Eligibility – Developmental Delay</td>
<td>1 AO (1)</td>
<td>Opposes 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.</td>
<td>Support proposed revision of &quot;Developmental Delay&quot; 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: • 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 • 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. The Code of Virginia has required special education for students with disabilities from age 2 since 1972. It would require a revision in the Code of Virginia to change this mandate.</td>
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| Definitions/Eligibility – Developmental Delay | 3 Adm 1 Cit 1 LEA 3 LEA Gen 2 PO 23 Prin 32 Sped Adm 17 Sped Tch 1 SW (83) | Oppose 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. | |

| Definitions/Eligibility – Developmental Delay | 20 Adv 39 AO 9 Att 2 Brd 560 Cit | Oppose the limitation of ages 2 to 5. Reasons cited included: • this is not the solution to disproportionality; • it may not be possible to make a definitive diagnosis at age 5; • the use of DD is important for young children who benefit from early intervention but are not easily categorized; | |

(56 comments) | 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. | |

(1170 comments)
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<td>1 Con</td>
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<td>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;</td>
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<td>1 Sped Adm</td>
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<td>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.</td>
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<td>3 Adv</td>
<td>5 AO</td>
<td>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.</td>
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<td>1 Par</td>
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<td>Supports federal regulations for early intervention for children in K-12 to address disproportional concerns.</td>
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<td>Definitions – Due Process Hearing 8 VAC 20-81-10 (1 comment)</td>
<td>1 Par</td>
<td>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.”</td>
<td>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.</td>
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<tr>
<td>Definitions/Eligibility – Emotional Disturbance 8 VAC 20-81-10 (788 comments)</td>
<td>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</td>
<td>Support using the term “Emotional Disability” rather than “Emotional Disturbance.”</td>
<td>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.”</td>
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<td>Definitions - Exceptional Circumstances 8 VAC 20-81-10 (1 comment)</td>
<td>1 Par</td>
<td>Supports including a definition for clarification.</td>
<td>Exceptional circumstances cannot be defined since it would depend on the nature of the specific situation and the standard of reasonableness would apply.</td>
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<tr>
<td>Definitions - Functional Behavioral Assessment 8 VAC 20-81-10 (916 comments)</td>
<td>12 Adv 16 AO 5 Att 606 Cit 1 EO 2 Int</td>
<td>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.</td>
<td>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...</td>
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| 2 LAC 1 LEA Gen 1 MD 1 OT 167 Par 1 PO 2 PT 2 PTA 3 SLP 4 Sped Tch 3 Stu | | | 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”.
| 3 Adv 10 AO 3 Att 15 Cit 1 EO 1 LAC 1 MD 42 Par 1 PO 1 PT 2 Stu | | | 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.”
| 1 SSEAC | | | 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 | | | Opposes FBA without parental input.
| 1 AO | | | 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 | | | 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 | | | 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.
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<td><strong>Definitions – Homeless Children</strong>&lt;br&gt;8 VAC 20-81-10&lt;br&gt;(1 comment)</td>
<td>1 AO (1)</td>
<td>No change is recommended for the definition included in the proposed regulations.</td>
<td>The language included refers to the requirements of the McKinney-Vento Homeless Assistance Act and reflects the requirements of that legislation.</td>
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<td><strong>Definitions - Home tutoring</strong>&lt;br&gt;8 VAC 20-81-10&lt;br&gt;(1 comment)</td>
<td>1 Sped Adm (1)</td>
<td>Suggests clarifying home tutoring and how it is different from home instruction.</td>
<td>This term, as well as home instruction, is included in the Code of Virginia, 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.</td>
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<td><strong>Impartial hearing officer</strong>&lt;br&gt;8 VAC 20-81-10&lt;br&gt;(1 comment)</td>
<td>1 AO (1)</td>
<td>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.</td>
<td>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.</td>
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<td><strong>Definitions - Implementation Plan</strong>&lt;br&gt;8 VAC 20-81-10&lt;br&gt;(53 comments)</td>
<td>3 Adv 6 AO 2 Att 13 Cit 25 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>Oppose the proposed deletion of the implementation plan as a requirement for LEAs.</td>
<td>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.”</td>
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<td><strong>Definitions – Inclusion</strong>&lt;br&gt;8 VAC 20-81-10&lt;br&gt;(1 comment)</td>
<td>1 SLP (1)</td>
<td>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.</td>
<td>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.</td>
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<td><strong>Definitions – Initial Placement</strong>&lt;br&gt;8 VAC 20-81-10&lt;br&gt;(1 comment)</td>
<td>1 Par (1)</td>
<td>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.</td>
<td>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.</td>
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<td>Definitions - Interpreting Services</td>
<td>1 Par</td>
<td>Suggests broadening interpreting services to include “intervenors.”</td>
<td>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.</td>
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<td>8 VAC 20-81-10</td>
<td>6 AO 1 Att 1 Cit 1 EO 1 LAC 18 Par 1 PO 1 SLP 1 Sped Tch 1 Stu</td>
<td>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.</td>
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<td>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</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 2 Stu</td>
<td>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.</td>
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<td>1 Att</td>
<td>Supports the change in definition.</td>
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<td>Definitions - Level 1 Services</td>
<td>3 Adv 11 AO 1 Att</td>
<td>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.</td>
<td>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</td>
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<td>8 VAC 20-81-10</td>
<td>14 Cit 1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 2 SLP 1 Sped Tch 3 Stu</td>
<td>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.</td>
<td>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.</td>
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<td>Definitions - Limited English Proficient</td>
<td>1 AO 1 Att 1 Par</td>
<td>(3)</td>
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<td>8 VAC 20-81-10</td>
<td>1 Att</td>
<td>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.</td>
<td>VDOE agrees and will recommend this suggestion to the BOE.</td>
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<tr>
<td>Definitions/Eligibility - Mental Retardation</td>
<td>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</td>
<td>Support using the term “Intellectual Disability” rather than “Mental Retardation” or “Cognitive Disability.”</td>
<td>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. VDOE agrees with these comments, however, and will recommend this revision to the BOE. 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. Additionally, VDOE will recommend retaining the phrase “that adversely affects a child’s educational performance.”</td>
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<td>2 Par 3 Cit</td>
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<td>“mild, moderate, and significant.”</td>
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<td>7 AO</td>
<td>2 Att</td>
<td>Oppose the use of criteria beyond the federal definition and also suggests that LEAs are not medical professionals.</td>
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<td>9 Cit</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>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.”</td>
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<td>2 Att</td>
<td>13 Cit</td>
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<td>1 MD</td>
<td>25 Par</td>
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<td><strong>Definitions – Music Therapy</strong></td>
<td>1 MT</td>
<td>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.</td>
<td>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.</td>
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<td>8 VAC 20-81-10</td>
<td>2 Par</td>
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<td><strong>Definitions – Nonacademic Settings</strong></td>
<td>1 Par</td>
<td>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.</td>
<td>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.</td>
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<td><strong>Definitions/Eligibility – Orthopedic Impairment</strong>&lt;br&gt;8 VAC 20-81-10</td>
<td>2 Sped Adm 1 Sup (3)</td>
<td>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.</td>
<td>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.</td>
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<td></td>
<td>1 AO 1 Par (2)</td>
<td>Suggest the use of “physical disability” rather than orthopedic impairment.</td>
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<tr>
<td><strong>Definitions/Eligibility - Other Health Impairment</strong>&lt;br&gt;8 VAC 20-81-10 8 VAC 20-81-80 Q. (143 comments)</td>
<td>3 Sped Adm (3)</td>
<td>Oppose the use of DSM for diagnosis since not every child who meets these criteria requires special education.</td>
<td>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.</td>
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<td>6 AO 2 At 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)</td>
<td>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.</td>
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<td>1 Sup (1)</td>
<td>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.</td>
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<td>1 AO 1 Par 1 Psy (3)</td>
<td>Oppose additional eligibility criteria.</td>
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<td>1 Sped Tch (1)</td>
<td>Suggests that criteria for OHI are needed because it appears to be a “catch all” category for students who should have a 504 plan.</td>
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<td>3 Adv 11 AO 3 At 14 Cit 1 EO 1 LAC</td>
<td>Suggest retaining arthritis and tuberculosis on the list of examples.</td>
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<td>1 MD 1 PO 38 Par 1 PT 1 SLP 1 Sped Tch 2 Stu</td>
<td>Oppose the proposed removal of the phrase, “adverse effect of educational performance in the areas of . . .”</td>
<td>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.</td>
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<td>2 Sped Adm 1 Sup</td>
<td>Suggests that the definition be revised to “that is due to chronic or acute health problems such as but not limited to” before the listing of examples to ensure that relevant conditions can be included.</td>
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<td>1 Par</td>
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<td>Definitions – Parent 8 VAC 20-81-10 (147 comments)</td>
<td>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.</td>
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<td>1 AO</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP</td>
<td>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.</td>
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<td>1 Sped Adm</td>
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<td>1 LEA Gen</td>
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<td>Definitions – Physical Therapy</td>
<td>8 VAC 20-81-10</td>
<td>Suggests replacing the proposed definition for physical therapy with the definition for physical therapy from the OT/PT Handbook for Public Schools in Virginia.</td>
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<td>Definitions – Placement</td>
<td>8 VAC 20-81-10</td>
<td>Suggests clearly defining the term, “placement” particularly as it relates to parentally placed students when FAPE is an issue.</td>
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<td>Definitions – Private School Children with Disabilities</td>
<td>8 VAC 20-81-10</td>
<td>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.”</td>
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<td>Definitions – Psychological Services 8 VAC 20-81-10 (3 comments)</td>
<td>1 Att 1 AO 1 Par (3)</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>Definitions – Reasonable 8 VAC 20-81-10 (1 comment)</td>
<td>1 Par (1)</td>
<td>Suggests including a definition for clarification (ie, if 10 business days is reasonable, make it statutory).</td>
<td>It is not possible to define “reasonable” since this is a term used by the courts to assess what is customary for the circumstance.</td>
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<td>Definitions – Related Services 8 VAC 20-81-10 (56 comments)</td>
<td>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)</td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>Definitions – School 8 VAC 20-81-10 (1 comment)</td>
<td>1 Par (1)</td>
<td>Supports clearly defining the term, “school” – particularly as it related to parentally placed students when FAPE is at issue.</td>
<td>As applied to parentally placed students, the terms “elementary school” and “secondary school” are defined in 8 VAC 20-81-150.</td>
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<tr>
<td>Definitions - Serious bodily injury 8 VAC 20-81-10 (1 comment)</td>
<td>1 Att (1)</td>
<td>Suggests that the regulations include “bodily injury.”</td>
<td>“Serious bodily injury” is the term used in the federal regulations and the standard used for disciplinary actions under the IDEA.</td>
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<td>Definitions/Eligibility – Severe Disabilities Category 8 VAC 20-81-10 8 VAC 20-81-80 (76 comments)</td>
<td>3 Adm 1 LEA 12 Prin 2 Sped Adm 1 Sped Tch (19)</td>
<td>Support proposed elimination of severe disabilities category.</td>
<td>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.</td>
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<td>1 Cit (1)</td>
<td>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.</td>
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<td>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)</td>
<td>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.</td>
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<td>1 Adv 1 Par (2)</td>
<td>Oppose changes to the definition of severe disabilities and suggest that it should remain the same.</td>
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<td></td>
<td>1 Par (1)</td>
<td>Opposes the removal of the definition of severe disabilities, particularly given that it is still included in 20-81-320.</td>
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<td>Definitions – Social Work Services in Schools 8 VAC 20-81-10 (26 comments)</td>
<td>2 Cit 2 LEA Gen 1 Prin 1 Psy 1 Sped Tch 16 SW (23)</td>
<td>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.</td>
<td>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.</td>
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<td>1 AO (1)</td>
<td>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.</td>
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<td>1 SW  (1)</td>
<td>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.</td>
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<td>1 SW  (1)</td>
<td>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.</td>
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**Definitions - Special Education Hearing Officer**

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.

**Definitions/Eligibility -**

1 Sped Adm

Opposes defining dyslexia when other specific learning disabilities are not Dyslexia is specifically included in the federal definition and was
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<tr>
<td>Specific Learning Disability</td>
<td>(1) 1 PRC</td>
<td>defined.</td>
<td>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.</td>
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- Opposes the use of the severe discrepancy model.
- 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.”
- Suggests that eligibility criteria for students suspected of having an SLD needs clarification. The application of those included is unclear.

| | (2) 2 Sped Adm | | |
| | (26) 4 AO 2 Att 1 Cit 1 EO 1 LAC 13 Par 1 PO 1 SLP 1 Sped Tch 1 Sup | | Additional clarification will be made available through technical assistance following the statewide training on Response to Intervention methods. |

| | (55) 3 Adv 6 AO 3 Att 13 Cit 1 MD 26 Par 1 PT 2 Stu | | |
| | | | |
| | (1) 1 LEA 1 Sped Adm 1 Cit | | |

Oppose the inclusion of an explanation of dyslexia as unnecessary and should be removed.

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...
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<td>2 AO 1 Att 3 Par (6)</td>
<td>Opposes additional eligibility criteria.</td>
<td>regulations would not.</td>
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<td>1 Psy (1)</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>Suggests maintaining age requirements for when determining learning disabled.</td>
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<td>1 Par (1)</td>
<td>Suggests the need for improvements in identification process of students with dysgraphia as the writing difficulties may be either language based or graphomotoric based to eliminate the assumption that the students are not working hard enough to do their work when there is clear etiology.</td>
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<td>1 AO 1 Sped Adm (2)</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>Suggests that language from the federal regulations be included that specifies, &quot;(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.</td>
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<td>1 Adv (1)</td>
<td>Opposes the language that states, &quot;Dyslexia is distinguished from other learning disabilities due to its weakness . . . &quot; 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.</td>
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<tr>
<td>1 Psy (1)</td>
<td>Suggests the definition of dyslexia be added to the proposed regulations.</td>
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<tr>
<td>1 Con (1)</td>
<td>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...</td>
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<td>Issue</td>
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<tr>
<td>Definitions/Eligibility – Speech or Language Impairment</td>
<td>1 AO 6 AO 9 Cit 1 EO 1 LAC 1 MD 28 Par 2 Att 1 PO 1 PT 1 SLP 1 Stu</td>
<td>Opposes additional eligibility criteria.</td>
<td>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.</td>
</tr>
<tr>
<td>8 VAC 20-81-80 R. (54 comments)</td>
<td></td>
<td>Opposes the use of criteria beyond federal definition and suggests that LEAs are not medical professionals.</td>
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<tr>
<td>Definitions – Supplementary Aids and Services</td>
<td>3 Adv 2 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>8 VAC 20-81-10 (54 comments)</td>
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<tr>
<td>Definitions – Timely Manner</td>
<td>3 Adv 2 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
<td>This language is consistent with the federal regulations. It is the responsibility of the LEA to ensure that students have the materials needed.</td>
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<tr>
<td>8 VAC 20-81-10 (54 comments)</td>
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<tr>
<td>Definitions/Eligibility – Traumatic Brain Injury</td>
<td>2 Sped Adm 1 Stu</td>
<td>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.</td>
<td>VDOE will recommend including language indicating an adverse effect on educational performance.</td>
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<td>8 VAC 20-81-10</td>
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<tr>
<td>Definitions - Unreasonable</td>
<td>1 Par (1)</td>
<td>Suggests including a definition for clarification.</td>
<td>As with the suggestion for reasonable, unreasonable is based on the circumstance and cannot be defined for these regulations.</td>
</tr>
<tr>
<td>Definitions /Eligibility – Visual Impairment</td>
<td>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)</td>
<td>Oppose the use of criteria beyond the federal definition and suggest that LEAs are not medical professionals.</td>
<td>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.</td>
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<td>1 Sped Adm (1)</td>
<td>Supports the level of specificity now included in the proposed definition.</td>
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<td>1 Par (1)</td>
<td>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.</td>
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</tr>
<tr>
<td>Functions of VDOE – General</td>
<td>1 Sped Adm (1)</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td></td>
<td>1 AO (1)</td>
<td>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.</td>
<td>VDOE will recommend to the BOE that 1.e. will read “Are</td>
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<td>1 AO</td>
<td>(1)</td>
<td>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).</td>
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<tr>
<td></td>
<td>(1)</td>
<td>No change is recommended for 23 which implies that data will be disaggregated to count students receiving special education who are homeless.</td>
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<tr>
<td>3 Adv</td>
<td>3 Att</td>
<td>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.”</td>
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<td>11 AO</td>
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<td>14 Cit</td>
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<td>1 EO</td>
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<td>1 LAC</td>
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<td>1 MD</td>
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<td>38 Par</td>
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<td>1 Sped Tch</td>
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<td></td>
<td>2 Stu</td>
<td>(78)</td>
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<tr>
<td>1 Stu</td>
<td>(1)</td>
<td>Supports VDOE ensuring that ED programs prepare students for graduation and college.</td>
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<tr>
<td>1 Stu</td>
<td>(1)</td>
<td>Supports VDOE ensuring that African American students are not put in ED programs when other programs will serve them better.</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>3 Adv</td>
<td>6 AO</td>
<td>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.</td>
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<td>2 Att</td>
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<td></td>
<td>13 Cit</td>
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<td>1 MD</td>
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<td>23 Par</td>
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<td>1 PT</td>
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<td>1 SLP</td>
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<tr>
<td></td>
<td>2 Stu</td>
<td>(52)</td>
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</table>

VDOE Response: 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.

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.

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.

VDOE’s monitoring and enforcement responsibilities are in compliance with IDEA and its federal implementing regulations.

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.

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.

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.

VDOE believes that local school divisions should be responsible for incentives for LEA personnel who demonstrate leadership in special education.

VDOE agrees with the comment to 5. and will recommend to the BOE insertion of the recommended language in this provision.
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<th>Issue</th>
<th>Source</th>
<th>Comments</th>
<th>VDOE Response</th>
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<tbody>
<tr>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>Suggest retaining current language in 22. “including submission of revised policies and procedures for provision of special education and related services.”</td>
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<tr>
<td>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</td>
<td>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.</td>
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<tr>
<td>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</td>
<td>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.</td>
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<tr>
<td>1 Att 1 Par</td>
<td>Support deleting provision 8 VAC 20-81-20 11. b. for consistency.</td>
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<tr>
<td>1 Par</td>
<td>Supports strengthening VDOE’s monitoring, enforcement and accountability responsibilities to ensure compliance with current regulations.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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</tr>
<tr>
<td>3 Par</td>
<td>(3)</td>
<td>Support requiring ongoing training for LEA personnel involved in the supervision and education of children with disabilities.</td>
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<tr>
<td>1 EO</td>
<td>(1)</td>
<td>Recommends providing incentives to those doing what is right in their systems.</td>
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<tr>
<td>8-VAC-20-81-20</td>
<td>1 Att (1)</td>
<td>Suggests that the words, “participate in” be added to the definition of Alternate Assessment.</td>
<td>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. 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.</td>
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<tr>
<td></td>
<td>1 Sped Adm (1)</td>
<td>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 &amp; 10th grade, even if potentially great assessment material.</td>
<td>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.</td>
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<tr>
<td></td>
<td>2 LEA Gen 12 Prin 9 Sped Adm 11 Sped Tch 1 Sw (35)</td>
<td>Support proposed regulations, as written, because they focus on improving student achievement.</td>
<td>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.</td>
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<tr>
<td></td>
<td>1 AO (1)</td>
<td>Supports improving communication with LEAs regarding SOLs (VSEP, VGLA), and for ensuring appropriate ways to identify students with disabilities who are passing.</td>
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<td></td>
<td>1 Par (1)</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>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.”</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 AO</td>
<td>(1)</td>
<td>Suggests clarifying language about alternative ways to earn verified credit.</td>
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<tr>
<td>1 AO</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 AO</td>
<td>(1)</td>
<td>Support proposed language in 20-81-30 in its entirety.</td>
<td>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.</td>
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<tr>
<td>1 AO</td>
<td>(1)</td>
<td>Suggests clarifying that non-educational placements do not include parentally made placements and only include public agency placements.</td>
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<tr>
<td>1 VDOE</td>
<td>(1)</td>
<td>Suggests that the proposed regulations distinguish that children in long-term placements will have FAPE ensured by their LEA.</td>
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<tr>
<td>1 VDOE</td>
<td>(1)</td>
<td>Suggest deleting the words, “unless the child is in a state-operated program” under 20-80-40, 10.</td>
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<tr>
<td>1 VDOE</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>6 AO</td>
<td>13 Cit 1 MD 25 Par 2 Att 1 PT 3 Adv 1 SLP 2 Stu</td>
<td>(54)</td>
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<tr>
<td>1 OA</td>
<td>(1)</td>
<td>Supports the added clarification related to residency included in the proposed regulations.</td>
<td>The regulations combine requirements from various sections of the Code of Virginia and efforts were made to clarify which LEA is responsible for the education of students in various situations. VDOE disagrees with the recommended language change. School divisions responsible for children who are homeless in</td>
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<tr>
<td>Staffing Requirements – Caseloads</td>
<td>1 Gen Ed (1)</td>
<td>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 &amp; Level 2) need more than one teacher in a classroom to meet their needs.</td>
<td>VDOE does not believe further clarification is needed related to the use of “similar” and “varying”.</td>
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<td>1 Gen Ed (1)</td>
<td>Suggests that general education classes with included special education students have limits established for the number of students with disabilities that can be included.</td>
<td>VDOE will recommend deletion of “severe disabilities” since this category is not included in the federal definitions.</td>
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<td>1 Gen Ed (1)</td>
<td>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.</td>
<td>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.</td>
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<td>1 AO 1 Gen ed 1 LEA Gen 1 Par 1 PO 1 SLP 2 Sped Tch (8)</td>
<td>Suggest defining “similar” and “varying” achievement levels when setting limits for students in a single class period.</td>
<td>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.</td>
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<td>1 Sped Adm (1)</td>
<td>Suggests deleting caseloads for students with Severe Disabilities since SD is no longer included.</td>
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<td>1 Sped Adm (1)</td>
<td>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.</td>
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<td>1 Sped Adm (1)</td>
<td>Suggests caseloads of 40 for SLPs since they have Medicaid paperwork, and lower caseloads would help with retention of SLPs.</td>
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<td>1 Sped Adm (1)</td>
<td>Supports decrease in caseloads for sped teachers in inclusion and co-teaching situations of no more than 16-18 students.</td>
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<td>1 Sped Adm</td>
<td>Supports a higher number of paraprofessional staff than indicated to provide</td>
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<td>support and services for students with significant disabilities in the general education classroom.</td>
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<tr>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td></td>
<td>Suggest changing Figure A, and Appendices 1 &amp; 2 to include DD caseloads for children through age nine.</td>
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<td>1 Sped Adm (1)</td>
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<td>Suggests adding level II numbers for DD children ages 2-5 since there is a current movement for more time with non-disabled peers.</td>
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<td>1 AO 1 Adv 4 Cit 8 Par (14)</td>
<td></td>
<td>Opposes the proposed teacher-student ratio for Autism of 6:1 for teacher and 1 paraprofessional for every 8 children.</td>
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<td>1 Sped Tch (1)</td>
<td></td>
<td>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.</td>
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<tr>
<td>1 AO 1 Att 1 Par (3)</td>
<td></td>
<td>Suggest changes to the caseload standards and that the Board move forward to make changes via the legislative process as soon as possible.</td>
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<td>2 AO 1 Att 1 LEA Gen 2 Par 1 PO 3 Sped Tch 1 SLP</td>
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<td>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.</td>
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<td>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.</td>
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<td></td>
<td>1 Par</td>
<td>Concerned about student-teacher ratio being 15 to 1.</td>
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<td>1 Par</td>
<td>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.</td>
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<td></td>
<td>1 Guid</td>
<td>Support staffing values associated with Appendix A.</td>
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<td>1 Par</td>
<td>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.</td>
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<td>3 Adv</td>
<td>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.</td>
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<td>VDOE Response</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>(53) Supports 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.</td>
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<td>1 Par (1)</td>
<td>Supports requiring disability-specific training for aides/paras with the training specific to the student that the aide/para is working with.</td>
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<tr>
<td></td>
<td>1 Par (1)</td>
<td>Opposes removal of endorsement by disability in Section 40.</td>
<td></td>
</tr>
<tr>
<td>Staffing Requirements - General (except length of day) 8 VAC 20-81-40 (3 comments)</td>
<td>1 Cit (1)</td>
<td>Suggests that categories no longer used in the definitions should be removed from the staffing table for staff to student ratios.</td>
<td>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.</td>
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<td>1 Gen Ed (1)</td>
<td>Suggests defining “knowledgeable” as it pertains to general education personnel who may implement special education services.</td>
<td>The term, “knowledgeable,” is the language used in the federal regulations and is based on the specific student and situation.</td>
</tr>
<tr>
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<td>1 Par (1)</td>
<td>Opposes proposed wording of “indirect services” because of a potential to dilute, diminish or compromise the delivery of special education services under an IEP.</td>
<td>The description of special education services as including both direct and indirect services is consistent with the federal regulations and guidance from USDOE.</td>
</tr>
<tr>
<td>Staffing Requirements – Highly Qualified 8 VAC 20-81-40 (2 comments)</td>
<td>2 Cit (2)</td>
<td>Support the proposed regulations that eliminates separate teacher licensure requirements for MR, ED, and LD.</td>
<td>The Board made this change to comply with revisions to the regulations regarding teacher education and licensure.</td>
</tr>
<tr>
<td>Staffing Requirements – Interpreters 8 VAC 20-81-40 E. (134 comments)</td>
<td>10 Int (10)</td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>1 IHE 1 Indiv 2 Int (4)</td>
<td>Oppose the use of EIPA as a qualification for educational interpreters.</td>
<td>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...</td>
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<td>Issue</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>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.</td>
<td>Federal regulations (§ 300.156) do not allow a waiver process. LEAs may need to review their recruitment procedures and salary scales for interpreters.</td>
</tr>
<tr>
<td>4 Int 1 Par 2 Sped Adm</td>
<td>(7)</td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>1 VDOE</td>
<td>(1)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>1 Int</td>
<td>(1)</td>
<td>Agrees that educational interpreters need to be highly qualified and professional.</td>
<td></td>
</tr>
<tr>
<td>1 Int 1 Par</td>
<td>(4)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>3 Int</td>
<td>(3)</td>
<td>Support the inclusion of requirements regarding continuing education classes.</td>
<td></td>
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<tr>
<td>2 Int</td>
<td>(2)</td>
<td>Support allowing 3 years to attain a VQAS Level III/transliteration skills certificate from TEC Unit/RID certification/EIPA 3.5</td>
<td></td>
</tr>
<tr>
<td>1 Int</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Int</td>
<td>(1)</td>
<td>Supports limiting language modes to ASL or PSE.</td>
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<tr>
<td>1 Int</td>
<td></td>
<td>Supports including timelines for requiring existing interpreters to meet the same competency.</td>
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<tr>
<td></td>
<td>(1)</td>
<td>standards as newly hired interpreters.</td>
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<tr>
<td>1 Int</td>
<td>(1)</td>
<td>Supports the inclusion of enforcement/accountability mechanisms in the regulations.</td>
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</tr>
<tr>
<td>3 Int 1 Par</td>
<td>(4)</td>
<td>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.</td>
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<tr>
<td>3 Int 1 Par</td>
<td>(4)</td>
<td>Oppose the use of the &quot;TEC Unit&quot;: It is &quot;virtually inaccessible and very hard to pass.&quot; 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.</td>
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<tr>
<td>1 Int</td>
<td>(1)</td>
<td>Strongly supports the proposed change regarding the certification of interpreters for the Deaf and Hard of Hearing.</td>
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<tr>
<td>3 Int 1 Par</td>
<td>(4)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>3 Int 1 Par</td>
<td>(4)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>3 Int 1 Par</td>
<td>(4)</td>
<td>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.</td>
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<tr>
<td>2 Int</td>
<td>(2)</td>
<td>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.</td>
<td></td>
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<tr>
<td>1 Int</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Cit</td>
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<td>Oppose making Level 3 mandatory when so many interpreters are capable of</td>
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<tr>
<td>14 Int 2 Par 1 Sped Adm 1 Sped tch (19)</td>
<td>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.</td>
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<tr>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>Support the proposed interpreter standards, as written.</td>
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<tr>
<td><strong>Staffing Requirements – VI Teachers</strong> 8 VAC 20-81-40 (57 comments)</td>
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<tr>
<td>1 AO 5 Cit 2 DBVI 16 Par 3 Sped Tch (27)</td>
<td>Suggest that Appendix A include a caseload requirement for teachers of students with visual impairments.</td>
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<tr>
<td>2 Cit 2 DBVI 5 Par 1 Sped Tch (10)</td>
<td>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.</td>
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<tr>
<td>2 Par (2)</td>
<td>Support lowering the caseloads for VI teachers since too high a caseload creates a situation where services are not provided appropriately.</td>
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<tr>
<td>2 DBVI 4 Par 1 Sped Tch (7)</td>
<td>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.</td>
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<tr>
<td>2 DBVI 2 Cit 6 Par 1 Sped Tch (9)</td>
<td>Support transferring the responsibility for the administration of state funds that support teachers of the visually impaired from DBVI to VDOE.</td>
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</table>

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.

VDOE does not believe that additional clarifications are necessary.
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<th>Issue</th>
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<tr>
<td>Child Find (includes screenings or public awareness) 8 VAC 20-81-50 (161 comments)</td>
<td>3 Adm 12 Prin 1 Sped Adm 1 Sped Tch (17)</td>
<td>Support the proposed revision to collapse the public awareness and screening framework to a single provision and requiring LEA procedures including timelines.</td>
<td>To provide maximum flexibility to LEAs, child find requirements were collapsed wherever feasible. As required by federal regulations, early intervening services cannot be used to delay a needed evaluation for a child suspected of having a disability. 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.</td>
</tr>
<tr>
<td></td>
<td>1 Sped Adm (1)</td>
<td>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.</td>
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<td></td>
<td>1 Sped Adm (1)</td>
<td>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.</td>
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<td>6 AO 1 Att 2 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu (29)</td>
<td>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.</td>
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<td>4 Adv 5 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 2 Stu (54)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD</td>
<td>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.</td>
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<tr>
<td>25 Par  1 PT  1 SLP  2 Stu  (54)</td>
<td>1 Par  (1)</td>
<td>Suggests that Child Find services should be audited, including the personnel conducting the screenings.</td>
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<td>1 Par  (1)</td>
<td>Opposes change in the screening requirements and suggests that parents be added to child find committees.</td>
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<td></td>
<td>1 Sped Adm  (1)</td>
<td>Suggests a list of the screening requirements from the Code of Virginia and regulations – perhaps as an appendix.</td>
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<td>1 AO  (1)</td>
<td>Supports the Child Find provisions as written in Section A.</td>
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<td>1 AO  (1)</td>
<td>Supports the provision ensuring no delay in an evaluation due to early intervening services.</td>
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<tr>
<td>Child Study Teams  8 VAC 20-81-50 D.  (977 comments)  0</td>
<td>3 Adm  12 Prin  2 Sped Adm  1 Sped Tch  (18)</td>
<td>Support the proposed removal of Child Study Committee requirements and allowing schools the flexibility of developing their own procedures.</td>
<td>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. 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. 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.</td>
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<td></td>
<td>1 Sped Adm  (1)</td>
<td>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.</td>
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<td>1 SSEAC  (1)</td>
<td>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.</td>
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<td>1 Adv  5 Cit  1 CSB  2 EO  15 Par  (24)</td>
<td>Oppose the elimination of Child Study Committees.</td>
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<tr>
<td>3 Adv 5 AO 1 Att 5 Cit 9 Par 1 Stu</td>
<td>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.</td>
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<tr>
<td>1 Cit 2 Par</td>
<td>Oppose the elimination of Child Study Committees because they serve an important role in supporting students and determining eligibility.</td>
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<tr>
<td>1 Par</td>
<td>Opposes the elimination of the Child Study process and the requirement, instead, that children participate in RTI.</td>
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<tr>
<td>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 1 Sped Adm 4 Stu</td>
<td>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.</td>
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<tr>
<td>8 AO 3 Att 3 Cit 2 EO 1 LAC 20 Par 1 PO 1 Sped Tch 1 Stu</td>
<td>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.</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Concerned about possible sanctions if timelines developed locally are challenged by the community and supported by the state.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 AO 1 MD 13 Par 1 PT</td>
<td>(23)</td>
<td>Suggest that Child Study provisions be restored as well as a definition included.</td>
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<tr>
<td>1 Cit</td>
<td>(1)</td>
<td>Opposes parents being shut out of the referral process.</td>
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**Evaluation – Initial (except timeline or consent)**

<p>| 8 VAC 20-81-60 | 3 Adv 6 AO 20 Cit 1 EO 1 MD 1 Psy 1 PT 1 LAC 69 Par 1 Sped Tch 2 Stu | Support allowing referrals for special education evaluations to come from anyone concerned about a student’s need for special education services. | 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. 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. Use of the term parent throughout the proposed regulations means those individuals defined as a parent in 20-81-10. |
| Eval criteria | (109) | 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. | 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). 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. |
| 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>
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<tr>
<td>65 Par &lt;br&gt; 1 PT &lt;br&gt; 2 SLP &lt;br&gt; 1 Sped Tch &lt;br&gt; 5 Stu &lt;br&gt; (135)</td>
<td>1 AO &lt;br&gt; (1)</td>
<td>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.</td>
<td>VDOE will recommend retaining the current requirement that the 65-day timeline is triggered at the time the special education administrator receives the referral.</td>
</tr>
<tr>
<td>1 AO &lt;br&gt; 2 Par &lt;br&gt; (3)</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>1 AO &lt;br&gt; 1 Att &lt;br&gt; 1 Par &lt;br&gt; (2)</td>
<td>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.</td>
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<td>1 AO &lt;br&gt; 1 Att &lt;br&gt; 1 Par &lt;br&gt; (3)</td>
<td>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.</td>
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<tr>
<td>3 Adv &lt;br&gt; 11 AO &lt;br&gt; 4 Att &lt;br&gt; 14 Cit &lt;br&gt; 1 EO &lt;br&gt; 1 LAC &lt;br&gt; 1 MD &lt;br&gt; 39 Par &lt;br&gt; 1 PO &lt;br&gt; 1 PT &lt;br&gt; 1 SLP &lt;br&gt; 1 Sped Tch &lt;br&gt; 2 Stu &lt;br&gt; (80)</td>
<td>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.</td>
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<tr>
<td>3 Adv &lt;br&gt; 11 AO</td>
<td>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</td>
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<td>Issue</td>
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<td>Comments</td>
<td>VDOE Response</td>
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<tr>
<td>4 Att 15 Cit 1 EO 1 LAC 1 MD 40 Par 1 PO 1 PT 1 Sped Tch 1 SLP 3 Stu</td>
<td>(83)</td>
<td>eligibility process.</td>
<td></td>
</tr>
<tr>
<td>1 AO 1 Att 1 Par</td>
<td>(3)</td>
<td>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.</td>
<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>Timeline - Evaluation/Eligibility 8 VAC 20-81-60 B. 1. g. &amp; h. (2216 comments)</td>
<td>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</td>
<td>Support the 65 business day timeline to complete eligibility but supports the timeline being triggered by the date of parent consent.</td>
<td>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. 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.</td>
</tr>
<tr>
<td>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</td>
<td>(63)</td>
<td>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.</td>
<td>The timeline included in the federal regulations addresses only initial evaluations, not reevaluations or completing the process for eligibility determination. 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.</td>
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<td>Issue</td>
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<td></td>
<td>(72)</td>
<td>Oppose the proposed 65 business day timeline and supports the federal guideline of 60 calendar days from date of parental consent for evaluation.</td>
<td>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.</td>
</tr>
<tr>
<td>1 Adv</td>
<td>12 AO 1 Att 282 Cit 1 LEA Gen 1 MD 64 Par 1 PT 1 PTA 2 SLP 2 Stu</td>
<td>Oppose the proposed 65 day timeline and suggests the timeline for determining eligibility not exceed the federal guideline.</td>
<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Suggests improving on federal minimum standards by requiring that the evaluation and eligibility determination process be completed within 55 business days.</td>
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</tr>
<tr>
<td>1 Sped Tch</td>
<td>(1)</td>
<td>Suggests the use of 45 calendar days to complete testing for eligibility.</td>
<td></td>
</tr>
<tr>
<td>6 AO 2 Att 11 Cit 1 EO 2 LAC 1 LEA Gen</td>
<td></td>
<td>Oppose triggering the eligibility timeline with consent rather than when the initial referral is made.</td>
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<td>Issue</td>
<td>Source</td>
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<td>VDOE Response</td>
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| 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 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. | |
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<tr>
<th>Issue</th>
<th>Source</th>
<th>Comments</th>
<th>VDOE Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Sped Adm</td>
<td>1 Att 4 Cit 4 Par 1 Sped Tch</td>
<td>Support allowing the 65 day timeline for evaluation and eligibility to be extended in order to obtain additional data.</td>
<td></td>
</tr>
<tr>
<td>1 Att</td>
<td>Support the extension of the evaluation/eligibility timeline only with parental consent.</td>
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<tr>
<td>3 Adv 1 AO 1 Att 14 Cit 1 MD 26 Par 6 PO 1 PT 2 Stu</td>
<td>Oppose the proposal that allows an extension of the timeline for evaluations.</td>
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<tr>
<td>1 Par</td>
<td>Opposes the lack of timelines for reevaluations.</td>
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<tr>
<td>1 Par</td>
<td>Opposes denying parents the right to receive timely evaluations and eligibility determinations.</td>
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<tr>
<td>4 Adv 1 AO 116 Cit 30 Par 1 PTA 2 SLP</td>
<td>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.</td>
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<tr>
<td>1 AO</td>
<td>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))</td>
<td></td>
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<tr>
<td>Evaluation/Reevaluation Procedures – General (except timeline, consent,) 3 Par</td>
<td>Recommend including language that would permit parents to observe in classes. Volunteers are continually allowed to observe students in class, but parents wanting to observe struggling students are met with resistance.</td>
<td>VDOE does not believe it is appropriate to regulate policies related to classroom observations. The development of those policies is the responsibility of local educational agencies.</td>
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<td>Issue</td>
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<tr>
<td>or initial evaluation procedures) 8 VAC 20-81-70 (280 comments)</td>
<td>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</td>
<td>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.</td>
<td>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.  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.  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.  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.  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.  The proposed regulations eliminated the requirement that the start of the reevaluation occur at least 65 days prior to the 3rd 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 3rd anniversary. The elimination of the start timeline provides more flexibility to LEAs.  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.  No additional clarification is necessary.</td>
</tr>
<tr>
<td>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</td>
<td>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.</td>
<td>(82)</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td>Oppose proposal that would allow the parent and eligibility group to extend the 65 day timeline to obtain additional data.</td>
<td>(75)</td>
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<tr>
<td>1 Sped Tch</td>
<td>Suggests clearly specifying which disabilities require a medical diagnosis.</td>
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<td>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</td>
<td>(55)</td>
<td>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.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Opposes denying the parent input into all evaluations and assessments, including independent FBAs.</td>
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<tr>
<td>1 Att</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
<td></td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>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.</td>
<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Suggests adding language that would require a comprehensive evaluation if an LEA believes that a student no longer qualifies for a related service.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
<td>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. 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.</td>
</tr>
<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.”</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Supports the elimination of the current requirement that a reevaluation be initiated 65 business days prior to the triennial date.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
<td></td>
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<tr>
<td>Consent – Evaluation/Reevaluation</td>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Supports the proposed requirement for consent for initial eligibility since parental involvement is essential.</td>
</tr>
<tr>
<td>(3 comments)</td>
<td></td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>Eligibility Criteria – General</td>
<td>13 Adv 22 AO 7 Att 577 Cit 1 CSB 4 EO 2 Int 3 LAC 1 LEA 1 LEA Gen</td>
<td>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.</td>
<td>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. To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included.</td>
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<td>Issue</td>
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<tr>
<td>1 OT 199 Par 2 PO 3 Psy 1 PT 3 PTA 3 SLP 3 Sped Tch 5 Stu</td>
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<td>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. <strong>Parents remain a part of the eligibility process. No changes were made in this regard.</strong> 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. No additional clarification is necessary.</td>
</tr>
<tr>
<td>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</td>
<td>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.</td>
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<td>1 Par</td>
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<td></td>
<td>(851)</td>
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<td>1 AO</td>
<td>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.</td>
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<tr>
<td>1 AO 1 Att 1 Par</td>
<td>(3)</td>
<td>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.</td>
<td></td>
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<tr>
<td>1 LEA Gen 2 PO 13 Prin 34 Sped Adm 4 SLP 1 SOP 9 Sped Tch</td>
<td>Support the adoption of uniform criteria for disability identification.</td>
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<td>Issue</td>
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<td>1 SW</td>
<td>(65)</td>
<td>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.</td>
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<tr>
<td>1 Cit</td>
<td>(1)</td>
<td>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.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>Opposes changes that limit the involvement of parents in the eligibility process.</td>
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<td>1 Par</td>
<td>(1)</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Suggests 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.</td>
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<td>1 Par</td>
<td>(1)</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Suggest 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.</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Suggests that neuro-psychological assessments be required to determine a specific disability and to help with identifying appropriate instruction and/or services.</td>
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<td>1 Sped Adm</td>
<td>(1)</td>
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<tr>
<td>2 AO</td>
<td>(1)</td>
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<td>1 Par</td>
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<tr>
<td>1 Sped Adm</td>
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<td></td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<td>1 LEA</td>
<td>(1)</td>
<td>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.</td>
<td>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. 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. The proposed provision related to “performance” is consistent with federal requirements. 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. The eligibility criteria proposed are generally accepted criteria and would provide consistency across Virginia. 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. VDOE will recommend language that retains parent consent requirements.</td>
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<tr>
<td>1 Gen ed</td>
<td>(1)</td>
<td>Suggests that medical evaluations be required for autism, ADD, ADHD since school personnel are not qualified to make these diagnoses.</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>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.</td>
<td></td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Support allowing observations of children when a disability is suspected.</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Opposes the use of RTI for disabilities other than LD.</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Suggests clarifying the term &quot;performance&quot; as it pertains to documentation of determination of eligibility. Does it apply only to performance on an SOL test, overall classroom performance, etc?</td>
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<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>Opposes the requirement for prior notice if a child is not eligible at initial eligibility.</td>
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<tr>
<td>3 Adv 6 AO 1 Att 14 Cit 1 MD 29 Par 1 PT 1 SLP 2 Stu</td>
<td>(58)</td>
<td>Oppose more stringent eligibility criteria which are highly restrictive and narrows the requirements of IDEA and the federal regulations.</td>
<td></td>
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<tr>
<td>3 Adv 7 AO 2 Att 13 Cit</td>
<td></td>
<td>Oppose deletion of language regarding the requirement for written parental consent for any change in categorical identification.</td>
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<td>Issue</td>
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<tr>
<td>1 MD 25 Par 1 SLP 2 Stu 1 PT</td>
<td></td>
<td>Opposes termination of eligibility without legal or medical basis.</td>
<td>A school cannot change an eligibility. An eligibility group, which includes the parent, makes this decision. 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.</td>
</tr>
<tr>
<td>1 Par</td>
<td>1</td>
<td>Suggests clarification is needed such as “Can the school change an eligibility?”</td>
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<td>1 Par</td>
<td>1</td>
<td>Suggests the need for clarification regarding the eligibility point of a child to transfer into Child Find from early intervention.</td>
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<tr>
<td>1 Gen Ed</td>
<td>1</td>
<td>Suggests the Board reexamine eligibility criteria and identification.</td>
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<td>1 Adv 1 LEA Gen</td>
<td>2</td>
<td>Oppose delaying the trigger for the eligibility timeline until parental consent is obtained rather than starting the clock when the initial referral is made.</td>
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<tr>
<td>3 Adv 6 AO 2 Att 13 Cit</td>
<td>2</td>
<td>Suggest that the section regarding initial eligibility be re-titled, “Children found not eligible for special education at initial eligibility” to add clarity that these only apply at initial eligibility.</td>
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<td>1 Att</td>
<td>1</td>
<td>Suggests the phrase, “for the child to have special education” is awkward and should read, “for the child to require special education services.”</td>
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<tr>
<td>1 Sped Adm 1 Par</td>
<td>2</td>
<td>Support the adoption of criteria for disabilities.</td>
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Eligibility -- Group Composition

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 |
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<th>Issue</th>
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<th>VDOE Response</th>
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<tr>
<td>Age 2 Eligibility</td>
<td>8 VAC 20-81-10; 8 VAC 20-81-100 A. 1. (6 comments)</td>
<td>2 SLP 1 Sped Adm (3)</td>
<td>Suggests 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.</td>
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<td></td>
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<td>1 Cit (1)</td>
<td>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.</td>
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<td>1 LEA Gen 1 Prin (2)</td>
<td>Support Early Intervention as the placement for 2 year olds with special needs, not public schools.</td>
</tr>
<tr>
<td>Response to Intervention</td>
<td>8 VAC 20-81-80 J. (94 comments)</td>
<td>1 Adv 1AO 1 Cit 1 LAC 7 Par 1 SLP (12)</td>
<td>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?</td>
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<td>1 AO 1 Att 1 Par (3)</td>
<td>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)</td>
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<td>1 Par (1)</td>
<td>Suggests that LEAs provide links or direct information on research-based response to intervention.</td>
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<td>1 Par (1)</td>
<td>Opposes the elimination of child study committees due to the lack of clarity about RTI and special education.</td>
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<td>1 PO (1)</td>
<td>Supports the use of RTI for determining whether a child has an SLD.</td>
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<td>1 Cit (1)</td>
<td>Supports clarification regarding Response to Intervention as it relates to the determination of specific learning disabilities.</td>
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| 1 LEA Gen | 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? | 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:  
• 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  
• 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.  
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.  
In response to the comments, however, VDOE will recommend that the BOE retain the current parent consent requirement. |
| 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 | 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. | |
| Consent -- Partial or complete Termination of Services 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 | Support the proposed removal of parental consent requirement for full or partial termination of services. Rationales:  
• 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;  
• To maintain termination causes significant personnel and financial impact on schools; and  
• 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. | |
<p>| 20 Adv 32 AO 7 Att 4 Brd 684 Cit 1 CSB 7 EO 2 Gen ed | 20 Adv 32 AO 7 Att 4 Brd 684 Cit 1 CSB 7 EO 2 Gen ed (151) | Oppose the proposed elimination of parental consent for full or partial termination of services. | |</p>
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<td>Oppose deletion of language indicating a requirement for parental consent for any determination that a child is no longer eligible for special education services.</td>
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<td>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.</td>
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<td>Supports the parent's opportunity to &quot;veto&quot; the IEP.</td>
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<td>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</td>
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<td><strong>Termination of Services (other than consent)</strong>&lt;br&gt;8 VAC 20-81-90 A. - C.&lt;br&gt;(59 comments)</td>
<td>1 Par (1)</td>
<td>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.</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>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.</td>
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<td>1 Psy (1)</td>
<td>Clarify whether or not IEP goals may be terminated without parental consent.</td>
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<td>3 Adv 6 AO 2 ATT 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>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.</td>
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<td>1 Att (1)</td>
<td>Suggests 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.”</td>
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<td>1 AO 1 Att 1 Par</td>
<td>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.</td>
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<td>FAPE – General</td>
<td>1 Gen Ed</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td></td>
<td>1 Sped Tch</td>
<td>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.</td>
<td>IDEA &amp; 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.</td>
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<td>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</td>
<td>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.</td>
<td>VDOE believes that the proposed regulations in their entirety are consistent with, or exceed the requirements of IDEA and the federal implementing regulations.</td>
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<td>3 Adv 6 AO 2 Att 11 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
<td>The provision for children with disabilities, regardless of citizenship or immigration status, being provided FAPE is ensured in 8 VAC 20-81-30 B.10 consistent with OSEP guidance and case law.</td>
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<tr>
<td></td>
<td>1 Par</td>
<td>Questions how VDOE will ensure FAPE if the proposed regulations pass, especially if the school has its own agenda.</td>
<td>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.</td>
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<td></td>
<td>1 Att</td>
<td>Seeks clarification regarding the requirement for non-citizens of the US to be evaluated and receive FAPE.</td>
<td>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.</td>
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<td></td>
<td>1 Par</td>
<td>Suggests that an appropriate education can only be determined with the parents and teachers working together.</td>
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<td>1 Att</td>
<td>(1)</td>
<td>Clarify what is meant by “separate facility.” Does this mean separate public and private schools?</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Cit</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td>1 Par</td>
<td>(1)</td>
<td>Concerned that the proposed regulations do not provide the same level of requirements as the federal special education regulations.</td>
<td>This provision is consistent with federal requirements.</td>
</tr>
<tr>
<td>1 Sped Adm</td>
<td>(1)</td>
<td>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.</td>
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<tr>
<td><strong>Transportation (other than private school)</strong>&lt;br&gt;8 VAC 20-81-100 G.3.</td>
<td>1 AO&lt;br&gt;1 Att&lt;br&gt;1 Par&lt;br&gt; (3 comments)</td>
<td>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.</td>
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<tr>
<td><strong>Timeline – IEP Development</strong>&lt;br&gt;8 VAC 20-81-110 B.2.b. &amp; c.</td>
<td>1 Sup</td>
<td>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.</td>
<td>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.</td>
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<td>6 AO&lt;br&gt;2 Att&lt;br&gt;9 Cit&lt;br&gt;1 EO&lt;br&gt;1 LAC&lt;br&gt;1 MD&lt;br&gt;33 Par&lt;br&gt;1 PO&lt;br&gt;1 PT&lt;br&gt;1 SLP&lt;br&gt;1 Sped Adm&lt;br&gt;1 Sped Tch&lt;br&gt;1 Stu&lt;br&gt; (59)</td>
<td>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.</td>
<td>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.</td>
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<td>4 Adv 6 AO 2 Att 13 Cit 1 EO 1 MD 50 Par 1 PT 1 SLP 3 Stu</td>
<td>Oppose lengthening the time, without parental consent, that a school has to postpone addressing a child’s specific accommodations.</td>
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<td>1 Par</td>
<td>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.</td>
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<td>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</td>
<td>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.</td>
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<tr>
<td>1 Sped Adm</td>
<td>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.</td>
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<td>1 Cit</td>
<td>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.</td>
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<td>2 Par</td>
<td>Suggest changing the implementation timeline to “not to exceed 10 days” rather than 30 – unless the LEA documents reasons for the delay.</td>
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<td>1 Cit</td>
<td>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</td>
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<td>makeup services be provided for delays beyond 10 calendar days.</td>
<td>1 LEA 3 Sped Adm (4)</td>
<td>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.</td>
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<td></td>
<td>1 AO (1)</td>
<td>Supports the requirement that an IEP be developed within 30 calendar days of eligibility.</td>
<td>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.</td>
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<tr>
<td>IEP -- Accountability for achieving IEP goals 8 VAC 20-81-110 B.7.</td>
<td>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)</td>
<td>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.</td>
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<td>(714 comments)</td>
<td>1 Adv 6 AO 1 Att 8 Cit 1 EO 1 LAC 1 MD 24 Par 1 PO 1 PT 1 SLP (46)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att</td>
<td>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.</td>
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<td>IEP – Team Composition (except excusal of members)</td>
<td>13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>Supports the proposed regulation that the LEA determines who fills the role of LEA IEP team members.</td>
<td>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. The phrase “at parent’s request” is consistent with the federal requirement. VDOE will retain “whenever is appropriate” which was included in the proposed regulations.</td>
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<td>1 Sped Adm (1)</td>
<td>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.</td>
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<td>2 Par (2)</td>
<td>Oppose removal of parents from the IEP team composition.</td>
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<td>1 Par (1)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>Supports proposed change from “if” to “whenever is appropriate” for child participation in the IEP meeting. This provides more impetus to include the student.</td>
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<td>IEP – Excusal of Team Members</td>
<td>6 AO 3 Adv</td>
<td>Oppose the proposed language used to describe the excused members requirements for submission of information and suggest replacing it at 20-81-110</td>
<td>The proposed provisions are consistent with the federal regulations.</td>
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<td>8 VAC 20-81-110 D.</td>
<td>2 Att</td>
<td>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.</td>
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<td>13 Cit</td>
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<td>1 MD</td>
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<td>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.</td>
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<td>IEP – Parent Participation in Meeting (except recording of meetings) – includes notice of meetings</td>
<td>1 Par</td>
<td>Supports parents as a member of the IEP team – better to work with parents than make an enemy.</td>
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<td>8 VAC 20-81-110 D. – E.</td>
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<td>4 Adv</td>
<td>Oppose proposed changes that would limit or decrease parent participation in the IEP process.</td>
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<td>1 AO</td>
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<td>1 Con</td>
<td>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.</td>
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<td>3 Par</td>
<td>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.</td>
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<tr>
<td>IEP – Recording of Meetings – video or audio</td>
<td>1 AO</td>
<td>Oppose limiting audio or video recording at eligibility, IEP, and MDR meetings. Support allowing recording of these meetings.</td>
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<td>8 VAC 20-81-110 E.6.</td>
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<td>14 Cit</td>
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<td>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</td>
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<tr>
<td>1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>(53)</td>
<td>meetings. This meeting can be overwhelming and unfamiliar information and terminology is likely to be used. Recording eligibility meetings will help reduce the confusion.</td>
<td>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.</td>
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<td>3 Adv 7 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 2 Stu</td>
<td>(53)</td>
<td>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.</td>
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<td>1 Att</td>
<td>(1)</td>
<td>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.</td>
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IEP – Development, Review, and Revision
8 VAC 20-81-110 F.
(171 comments)

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<td>1 Par</td>
<td>(1)</td>
<td>Opposes changes to IEP guidelines.</td>
<td>The proposed provisions are consistent with the federal regulations.</td>
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<td>1 Cit</td>
<td>(1)</td>
<td>Opposes the elimination of summer school for students with disabilities.</td>
<td>Summer school has always been an LEA initiative under the general education curriculum. It is separate and distinct from ESY services.</td>
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<td>6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 SLP 1 PT 1 Sped Tch 1 Stu</td>
<td>(53)</td>
<td>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.</td>
<td>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 LOVASS or ABA.</td>
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<td>3 Adv 6 AO 2 Att 12 Cit 1 MD 23 Par</td>
<td></td>
<td>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.</td>
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<td>Issue</td>
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<td>1 PT 1 SLP 2 Stu</td>
<td>(51)</td>
<td>Suggests that the requirement for an IEP not be removed.</td>
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<td>1 Stu</td>
<td>(1)</td>
<td>Suggests that all members of the IEP team be informed prior to any changes to the child’s IEP.</td>
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<td>2 AO 1 LEA Gen 1 Par 1 PO 1 SLP 2 Sped Tch</td>
<td>(8)</td>
<td>Suggests the need for expanded professional services and additional aids for students with hearing impairments.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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).</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu</td>
<td>(52)</td>
<td>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.</td>
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<td>IEP -- Content (General) 8 VAC 20-81-110 G.</td>
<td>1 Sped Adm</td>
<td>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.</td>
<td>Only those IEP requirements included in the federal regulations or the Code of Virginia are included in the proposed regulations. These regulations do not prohibit the use of procedures developed locally to enhance the collaboration that is intended.</td>
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<td>(658 comments)</td>
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<td>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.</td>
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<td>The proposed regulations provide additional clarification regarding placement and location, complying with all federal mandates.</td>
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<td>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.</td>
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<td>Parental participation was not decreased in the proposed regulations.</td>
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<td>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.</td>
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<td>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.</td>
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<td>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.</td>
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<td>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.</td>
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<td>2 Sped Adm 1 Sped Tch</td>
<td>(3)</td>
<td>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.</td>
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<td>3 Stu (86)</td>
<td>1 Par (1)</td>
<td>Suggests clarifying that IEPs must be in effect at the beginning of the school year – not just “in process.”</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>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.</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>Suggests 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.</td>
<td>The phrase &quot;based on peer&quot; reviewed…” was inadvertently omitted from the proposed regulation. VDOE will recommend that the phrase be inserted.</td>
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<td>1 Par (1)</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>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.</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu (53)</td>
<td>Suggest using the term “shall” rather than “should” in describing what will be included in the present level of performance.</td>
<td>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.</td>
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<td>IEP Content – Present Level of Performance 8 VAC 20-81-110 G.1. (57 comments)</td>
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<td>1 Par</td>
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<td>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.</td>
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<td>1 AO</td>
<td>(3)</td>
<td>Suggest that it be required for the present levels of performance directly related to other components of the IEP.</td>
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**IEP Content - Short-Term Objectives**  
8 VAC 20-81-110 G. 3.  
(1080 comments)

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<th>17 AO</th>
<th>6 Att</th>
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<th>1 Sped Adm</th>
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<td>Oppose proposed elimination of short-term objectives for non-VAAP students. Support the requirement for short-term objectives and benchmarks for all students.</td>
<td>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. 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.</td>
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<td>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.</td>
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<td>3 LEA Gen 1 PO 12 Prin 1 SLP 36 Sped Adm 20 Sped Tch 1 SSEAC 1 SW</td>
<td>Support elimination of short-term objectives/ benchmarks, consistent with IDEA 2004, to be required only for students eligible for the alternate assessment.</td>
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<td>1 Sped Adm (1)</td>
<td>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.</td>
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<td><strong>IEP - Progress Reports</strong> 8 VAC 20-81-110 G. 8. (1054 comments)</td>
<td>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.</td>
<td>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.</td>
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<td>1 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</td>
<td>Support the proposed regulation regarding the provision of progress reports to parents.</td>
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**IEP Content – Secondary Transition (except transition age)**

8 VAC 20-81-110 G. 10 & H. (270 comments)

- 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.

- 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.”

- 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).

- 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.

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.

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.

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.

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.

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.

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.
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<td>2 SW</td>
<td>(2)</td>
<td>Suggest clarifying which school personnel will be responsible for ensuring that transition services are provided as a &quot;coordinated set of activities.&quot;</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 1 PT 2 Stu</td>
<td>(53)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 SLP 2 Stu</td>
<td>(53)</td>
<td>Suggest indicating in the regulations who will be responsible for inviting representatives from other agencies to the IEP meeting. Suggested language is, &quot;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.&quot; This would avoid confusion regarding who will take the responsibility for inviting representatives and better ensure parent participation.</td>
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<td>1 Sped Tch</td>
<td>(1)</td>
<td>Suggests that VDOE take the lead in coordinating postgraduate programs between LEAs and community colleges for students who can earn a modified IEP diploma.</td>
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<td>2 Sped Adm</td>
<td>(2)</td>
<td>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.</td>
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**Transition Age**

8 VAC 20-81-110 G. 10 (1111 comments)

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| 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:  
- 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  
- the need to ensure that students with disabilities have the opportunity to meet certain transition expectations prior to exiting public education.  
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 |
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<td>20 AO 4 At 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</td>
<td>14.</td>
<td>Suggest grade level alignment for transition services, convening no later than the completion of the 8th grade to coordinate with the Modified Standard Diploma regulations.</td>
<td>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.</td>
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<td>3 LEA Gen 1 PO 12 Prin 1 SLP 38 Sped Adm 13 Sped Tch 1 SW</td>
<td>Suggests using standard in current regulations which requires a two-tiered system that begins at age 14.</td>
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<td>1 SSEAC (1)</td>
<td>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.).</td>
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<td>2 AO 1 LEA Gen 1 Par 1 PO</td>
<td>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.</td>
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<td>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.</td>
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<td>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.</td>
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<td>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</td>
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<td>Transfer Students</td>
<td>8 VAC 20-81-120</td>
<td>(100 comments)</td>
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<td>1 Sped Adm</td>
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<td>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</td>
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| 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. | 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. | |
| Consent – Transfer Students  
8 VAC 20-81-120 A.2.  
(957 comments) | 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. |

Consent – Transfer Students
8 VAC 20-81-120 A.2.  
(957 comments)

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. |
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<td>1 Adv 50 Par 1 Stu</td>
<td>Oppose restrictions on the parent’s involvement in ensuring accommodations if the child transfers to another school.</td>
<td>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.</td>
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<td>1 Par 2 Sped Tch</td>
<td>Support the elimination of parental consent before providing special education services for transfer students.</td>
<td>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.</td>
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<td>1 Par</td>
<td>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.</td>
<td>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.</td>
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<td>Least Restrictive Environment</td>
<td>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.</td>
<td>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 4th Circuit case relative to location and placement. VDOE does not believe that it is necessary to regulate this matter any further.</td>
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<td>2 Par</td>
<td>Opposes placing students with physical disabilities in a self-contained setting they are capable of learning with their grade-level and age-appropriate peers.</td>
<td>To clarify that LRE applies to preschoolers, VDOE will recommend to the BOE additional language at 8 VAC 20-81-130</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 SLP 2 Stu 1 PT</td>
<td>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.</td>
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<td>1 Par</td>
<td>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.</td>
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| 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 LEA Gen  
13 Prin  
36 Sped Adm  
19 Sped Tch  
1 SW  
2 PO  
1 SLP  
1 Supt | (76) | 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. | |
<p>| 1 Par | (1) | 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 Prin | (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). | |
|  |  | 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. | |</p>
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<td>1 Par</td>
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<td>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.</td>
<td>It the student is eligible for services at VSDB, no contract is necessary. No additional language is necessary. 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.</td>
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<td><strong>Virginia School for the Deaf and the Blind at Staunton</strong> 8 VAC 20-81-140 (1 comment)</td>
<td>1 Sped Adm (1)</td>
<td>Supports repealing the requirement that school divisions and VSDB develop contractual agreements to ensure compliance with the federal and state special education requirements.</td>
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<td><strong>Private Schools – Parentally Placed Private School Students</strong> 8 VAC 20-81-150 C.; 8 VAC 20-81-170 E. 4. c. (64 comments)</td>
<td>1 Par (1)</td>
<td>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.</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Atl 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)</td>
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<td>Recommend 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.</td>
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<td>2 Par (2)</td>
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<td>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.</td>
<td>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. The proposed regulations are consistent with federal regulations and guidance from USDOE regarding each LEA’s responsibility</td>
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<td>2 Par</td>
<td>(2)</td>
<td>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</td>
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<td>1 Par (1)</td>
<td>Recommend 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 an eligible child from one public LEA to another within the State of Virginia.</td>
<td>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. 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.</td>
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<tr>
<td>2 Par (2)</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>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.</td>
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<td>1 Par (1)</td>
<td>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.</td>
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**Discipline – General**

8 VAC 20-81-160 A., I., J. (987 comments)

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<td>1 Adv 10 AO 248 Cit 2 Int 1 LAC 1 MD</td>
<td>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.</td>
<td>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</td>
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<td>81 Par 1 PO 2 PT 2 PTA 2 SLP 1 Sped Tch 1 Stu</td>
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<td>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.</td>
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<td>4 Adv 2 AO 97 Cit 11 Par 1 SLP 1 Sped Tch</td>
<td>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.</td>
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<td></td>
<td>1 Par</td>
<td>Opposes the elimination of the discipline procedures in 8 VAC 20-81-160.</td>
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<td>4 Cit 1 EO 3 Par</td>
<td>Generally oppose changes in this section, and support maintaining current discipline procedures. Rationales: • They will make it easier to have a child removed if they have behavioral problems. • They remove protections for students with long-term behavioral problems. • They vest too much arbitrary authority with the LEA and encourage warehousing “problem students” rather than addressing problem behaviors through meaningful positive interventions.</td>
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<td>5 AO 1 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu</td>
<td>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.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<td>1 SSEAC</td>
<td>(1)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 At 13 Cit 1 MD 25 Par 1 PT 2 Stu</td>
<td>(53)</td>
<td>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.</td>
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<td>1 SLP</td>
<td>(1)</td>
<td>Recommends a revision in dismissal procedures or criteria for receiving ISS</td>
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<td>1 Par</td>
<td>(1)</td>
<td>Opposes tactics such as allowing LEA staff to use painful restraint holds on young children for any reason.</td>
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<td>1 Adv</td>
<td>(1)</td>
<td>Supports clarification that returning a student to the original placement means to the original school, not simply the same level of services.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<td>6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 28 Par 1 PO 1 PT 1 SLP 1 Sped Tch</td>
<td></td>
<td>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.</td>
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<td>1 Stu</td>
<td>(53)</td>
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<tr>
<td>3 Adv</td>
<td>6 AO</td>
<td>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 Light v. Parkway C-2 S.D. (8th Cir. 1994).</td>
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<td>4 AO</td>
<td>1 Att</td>
<td>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.</td>
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<tr>
<td>3 Adv</td>
<td>11 AO</td>
<td>Oppose the proposed deletion of the word &quot;substantially&quot; when defining whether the behavior is likely to result in injury to self or others. Without using &quot;substantially likely&quot;, the use of &quot;likely&quot; is a violation of federal regulations and unlawfully lowers the standard.</td>
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<tr>
<td>6 Adv</td>
<td>3 AO</td>
<td>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.</td>
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<td><strong>Support amending P.3. to require documentation within 3 business days of changes in hearing dates since expedited due process hearings are on &quot;a fast track&quot;, and held within 20 school days.</strong></td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>(54)</td>
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<td><strong>Discipline - Short-term Removals (except services)</strong></td>
<td>1 Att (1)</td>
<td><strong>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.</strong></td>
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<td>8 VAC 20-81-160 B.2. &amp; C.6.</td>
<td>(55 comments)</td>
<td><strong>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).</strong></td>
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<td>Discipline - Long Term Removals &amp; interim alternative education setting (IAES) placements (except services)</td>
<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 2 Stu</td>
<td>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.</td>
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<tr>
<td>8 VAC 20-81-160 C.</td>
<td>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</td>
<td>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.</td>
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<td>3 Adv 7 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
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<td>1 Att</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att</td>
<td>Suggest amending the proposed 20-81-160 C.5. to address &quot;special circumstances&quot; to provide that &quot;school personnel may remove a child with a disability to an appropriate interim alternative educational setting for no more than</td>
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<td>13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
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<td>6 AO 2 Att 9 Cit 1 EO 1 LAC 1 MD 29 Par 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu</td>
<td>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.</td>
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<td>6 AO 2 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu</td>
<td>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.</td>
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<td>1 AO 1 Att 1 Par</td>
<td>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.</td>
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<td>1 Par</td>
<td>Supports requiring that a psychologist or psychiatrist be required to be part of the FBA team that evaluates behavior and provides BIPs.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD</td>
<td>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.</td>
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<td>24 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>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.</td>
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<td>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)</td>
<td>Oppose proposed language that allows an exception to the IEP team determination including parents, for an interim alternative 45 day placement.</td>
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<td><strong>Discipline -- Services During Removal (except FBA and BIP)</strong> 8 VAC 20-81-160 B. 2. &amp; C. 6. (969 comments)</td>
<td>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.</td>
<td>The proposed provisions are consistent with federal regulations and require that a child with a disability who is long-term removed: • continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting; • 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 • 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.</td>
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<td>1 Par</td>
<td>Oppose elimination of services to students removed for more than 10 days.</td>
<td>Consistent with the federal regulations, the proposed regulations require: * that the IEP team determines the services needed for the child with a disability who has been long-term removed; and * for additional short-term removals, services are determined by school personnel. 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.</td>
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<tr>
<td>3 Adv</td>
<td>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.</td>
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<td>6 AO</td>
<td>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.</td>
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<td>2 Att</td>
<td>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 &quot;receive a free appropriate public education as required by IDEA&quot;. Also suggest that the services be provided &quot;to&quot; (rather than &quot;that will&quot;) enable the child to progress toward meeting the IEP goals . . . &quot; &quot;That will&quot; implies that LEAs can determine which services the child will receive and denies the child of FAPE.</td>
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<td>13 Cit</td>
<td>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.</td>
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**Discipline -- Functional Behavioral Assessments (FBA) & Behavioral**

4 Sped Adm | 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 11th**
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<tr>
<td>Intervention Plans (BIP) 8 VAC 20-81-160 C. 6. a. (3) 8 VAC 20-81-160 D. 6. (1161 comments)</td>
<td>1 Sped Tch (1)</td>
<td>Supports proposed provisions regarding the role of parents on the FBA team.</td>
<td>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.</td>
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<td>5 Adv 11 AO 339 Cit 2 Int 90 Par 1 PT 3 PTA 3 SLP 2 Sped Tch 3 Stu (459)</td>
<td>Oppose the proposed elimination of the requirement that a BIP/FBA be completed or modified for any student with a disability suspended long-term.</td>
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<td>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)</td>
<td>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.</td>
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<td>1 AO 2 Cit 1 EO 14 Par (18)</td>
<td>Oppose the removal of the parents from the FBA team.</td>
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<td>1 Adv 1 Cit 3 Par (5)</td>
<td>Support retaining all requirements in the current Virginia regulations for conducting FBAs.</td>
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<td>1 AO</td>
<td>(1)</td>
<td>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.</td>
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<td>1 Adv</td>
<td>3 AO 1</td>
<td>Oppose proposed changes regarding FBAs as they reduce the parents’ ability to participate in the special education process.</td>
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<td>1 Att 11</td>
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<td>MD 57 Par</td>
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<td>Sped Tch 2 Stu</td>
<td>(80)</td>
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<td>1 AO</td>
<td>4 Par (5)</td>
<td>Oppose changes regarding FBAs and BIPs as they will deny parents the right to an Independent FBA.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)</td>
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<td>3 Adv</td>
<td>6 AO 2</td>
<td>Request revision of D.6.a to require that the school district consider and implement positive behavioral strategies in developing and reviewing BIPs.</td>
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<td>2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)</td>
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<td>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.</td>
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<td>6 Adv 12 AO 4 Att 28 Cit 2 MD 50 Par 2 PT 2 SLP 4 Stu (110)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>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.</td>
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<td>1 Att (1)</td>
<td>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.</td>
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<td>1 Cit (1)</td>
<td>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.</td>
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<td><strong>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.</strong></td>
<td><strong>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.</strong></td>
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<td><strong>Not all students with disabilities need FBAs and BIPs. To require IEP teams to meet blanket requirements is not beneficial.</strong></td>
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<td><strong>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.</strong></td>
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<td><strong>Support proposed regulations regarding discipline that do not exceed federal regulations.</strong></td>
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<td><strong>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.</strong></td>
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<td><strong>Discipline -- Manifestation Determination Review (MDR) - (except FBA and BIP)</strong></td>
<td>1 Att</td>
<td><strong>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.</strong></td>
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<td>8 VAC 20-81-160 D. (227 comments)</td>
<td>1 Sped Adm (1)</td>
<td>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?</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>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.</td>
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<td>1 AO 1 Att 1 Par (3)</td>
<td>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.</td>
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<td>1 AO 1 Att 1 Par (3)</td>
<td>Support proposed requirement for MDR/IEP teams to document the reasons for the answers to the each question they must address.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT</td>
<td>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.</td>
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<td>1 SLP 2 Stu</td>
<td>3 SLP 6 Stu (55)</td>
<td>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.</td>
<td>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. 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.</td>
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<td>Discipli ne – Protection for Students Not Yet Eligible 8 VAC 20-81-160 H. (190 Comments)</td>
<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (82)</td>
<td>Oppose the proposed deletion of language indicating that the LEA had knowledge if &quot;the behavior or performance of the student demonstrates the need for these services,&quot; because these factors are important for schools to consider.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP</td>
<td>Suggest clarifying the provision indicating the LEA would not have knowledge if the child had previously been evaluated to say that &quot;(b) the child has been evaluated within the last 3 years...&quot; and determined ineligible for special education and related services.</td>
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<td>Educational Records</td>
<td>2 Stu</td>
<td>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.</td>
<td>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. There are state requirements that govern when files may be destroyed. 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. 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. VDOE agrees that additional language is needed regarding termination of rights.</td>
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<td>(54)</td>
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<td>3 Adv 6 AO 2 Att 15 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>(56)</td>
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<td>Suggests including a requirement preventing LEAs from destroying e-mail and testing education records prior to due process proceedings.</td>
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<td>1 Par</td>
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<td>Suggests including a requirement that all education records be available in one location for parental review.</td>
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<td>1 Att</td>
<td>(1)</td>
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<td>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.</td>
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<td>Independent Educational Evaluation (IEE)</td>
<td>6 AO 3 Adv 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
<td>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, speech-language), 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 each 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.</td>
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<td>Prior Written Notice (PWN) 8 VAC 20-81-170 C.</td>
<td>5 Adv 15 AO 3 Alt 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</td>
<td>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.</td>
<td>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 too 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.</td>
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<td>4 Adv 2 AO 32 Cit 6 Par 1 SLP</td>
<td>Oppose the proposed limitation on when LEAs must provide PWN, including when the IEP team cannot come to consensus.</td>
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<td>1 Par</td>
<td>Opposes any change that would allow the school to change services without parental notification.</td>
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<td>1 Cit</td>
<td>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 &quot;reasonable time&quot;.</td>
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<td>1 AO</td>
<td>Suggests the draft regulations regarding PWN dilute the federal requirements.</td>
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<td>1 Par</td>
<td>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.</td>
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<td>3 Adv 6 AO</td>
<td>Recommend amending C. 1. to note that PWN shall be given to the parent within a reasonable time, &quot;but in no case more than 24 hours before or after the local</td>
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<td>2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>educational agency....  Providing a specific timeline will alleviate misunderstandings and prevent a delay in filing for Due Process, if necessary.</td>
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<td>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</td>
<td>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.</td>
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<td>Procedural Safeguards Notice 8 VAC 20-81-170 D. (133 comments)</td>
<td>1 Par</td>
<td>Opposes any changes to the current procedural safeguards.</td>
<td>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.</td>
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<td>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</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT</td>
<td>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.”</td>
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<td>Consent – General 8 VAC 20-81-170 E (750 comments)</td>
<td>1 AO 2 Par 1 Sped Tch</td>
<td>Support current parent consent provisions.</td>
<td>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. The definition of parent is consistent with state and federal law and regulations and includes foster parents under specified conditions. 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.</td>
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<td>2 Par 1 Sped Tch</td>
<td>Oppose the elimination of parental consent prior to providing special education services to students with disabilities.</td>
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<td>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</td>
<td>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.</td>
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<td>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</td>
<td>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.</td>
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<td>2 Cit 1 Guid 1 Prin 1 Psy 3 Sped Adm 4 Sped Tch 1 SLP (13)</td>
<td>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.</td>
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<td>1 Sped Adm (1)</td>
<td>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.</td>
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<td>1 Adm 1 Par 2 Prin 6 Sped Adm 2 Sup (12)</td>
<td>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.</td>
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<td>1 Cit (1)</td>
<td>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.</td>
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<td>3 Adv 2 Att 6 AO 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (54)</td>
<td>Support Proposed regulation E. 1. f. regarding the requirement for parental consent before inviting a representative of a participating agency to an IEP meeting.</td>
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<td>1 Sped Adm (1)</td>
<td>Opposes proposed changes that include the phrase, “without parental consent.”</td>
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<td>1 AO (1)</td>
<td>To avoid conflicts, supports the inclusion of language that any “agreement” must be in writing, not just “consent.”</td>
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<td>Consent – When not required</td>
<td>3 Par</td>
<td>(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.</td>
<td>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.</td>
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<td>Consent – Documenting Reasonable Measures</td>
<td>1 Sped Adm</td>
<td>(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.</td>
<td>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.</td>
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<tr>
<td>Consent – FBA</td>
<td>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</td>
<td>(754) Oppose the development of an FBA without parental consent.</td>
<td>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.</td>
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<tr>
<td>Insurance – Use of Private or Public Insurance, including Medicaid</td>
<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>Support implementing 8 VAC 20-81-300 as proposed.</td>
<td>This provision reflects the federal regulations.</td>
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<td>Procedural Safeguards – Electronic Mail and Signature</td>
<td>4 Par</td>
<td>Support the option to make notices of due process and the procedural safeguards notice available electronically.</td>
<td>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.</td>
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<tr>
<td>Age of Majority – Transfer of Rights</td>
<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>Dispute Resolution – General</td>
<td>1 Par</td>
<td>Supports restricting VDOE from misrepresenting federal citations.</td>
<td>VDOE does not believe it is necessary to further regulate this area.</td>
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<td>1 Par</td>
<td>There should be a consequence for giving false information during a due process or with regard to a complaint.</td>
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<td></td>
<td>1 Par</td>
<td>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.</td>
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<tr>
<td>Mediation</td>
<td>1 Att</td>
<td>Suggests requiring VDOE to review and approve mediation agreements for compliance with its regulations as to the rights of the child.</td>
<td>The proposed provisions are consistent with the federal regulations, including the requirement for confidentiality and the</td>
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<td>8 VAC 20-81-190 (127 comments)</td>
<td>1 Att (1)</td>
<td>Suggests that VDOE serve as an optional mediation agreement enforcement entity as an alternative to parents going to court.</td>
<td>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.</td>
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<td>1 PRC (1)</td>
<td>Supports confidentiality in mediation.</td>
<td>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.</td>
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<td>2 Sped Adm (2)</td>
<td>Support that VDOE require parties to sign a confidentiality pledge to ensure that decisions during mediation remain confidential, irrespective of the mediation results.</td>
<td>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.</td>
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<td>4 Par (4)</td>
<td>Support that mediation should conclude with a legally binding agreement.</td>
<td>Language is already included indicating that mediation cannot be used to deny or delay a due process hearing.</td>
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<td>4 Par (4)</td>
<td>Oppose the requirement that discussions occurring during mediation cannot be used in a due process hearing or civil proceeding.</td>
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<td>3 Adv 7 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP 2 Stu (57)</td>
<td>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.</td>
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<td>3 Adv 7 AO 2 Att 14 Cit 1 MD 26 Par 1 PT 1 SLP 2 Stu (57)</td>
<td>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.</td>
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<tr>
<td>Complaints Process 8 VAC 20-81-200</td>
<td>1 Att (1)</td>
<td>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.</td>
<td>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</td>
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<td>(93 comments)</td>
<td>1 AO</td>
<td>Suggests that the homeless liaison be included in determining the available contact information for complaints.</td>
<td>VDOE will take under advisement the posting of complaint decisions.</td>
</tr>
<tr>
<td>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</td>
<td>(82)</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>2 Par</td>
<td>(2)</td>
<td>Suggest adding a requirement for VDOE to post Letters of Finding on the website.</td>
<td>Inappropiate 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.</td>
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<tr>
<td>1 AO 1 Att 1 Par</td>
<td>(3)</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>1 Cit</td>
<td>(1)</td>
<td>Suggests permitting state complaints to be admissible in due process hearings for both parents and LEAs.</td>
<td>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.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>Suggests adding the following clarification, “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</td>
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| Due Process – Moving Administration from Supreme Court of VA to VDOE | 21 Adv 27 AO 8 Att 708 Ctl 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 | Oppose moving the management of hearing officers from the Supreme Court to VDOE. Rationales:  
• Concern about the appearance of a conflict of interest. VDOE is not in a neutral position between the parties.  
• Due process must be impartial, and under VDOE, the due process system would be perceived as being aligned with LEAs, and therefore, “tainted.”  
• To rule on behalf of a parent, the hearing officer would have to rule against its employer, VDOE. | 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. 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:  
• the establishment of procedures for recruitment, selection, and appointment;  
• training; and  
• evaluation and determinations regarding continued eligibility to serve as a Special Education Hearing Officer. 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. 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. |
| 8 VAC 20-81-210 A. & B. (1077 comments) | 1 Att 1 LEA 3 LEA Gen 1 PO 11 Prin 31 Sped Adm 16 Sped Tch 2 Sup 1 SW | Support the movement of responsibility for special education hearing officer system from VA Supreme Court to VDOE. Rationales:  
• It would provide for improved effectiveness and greater efficiency.  
• It ensures the timely appointment of a hearing officer and enables timelines to be met. | |
<p>| 1 SSEAC (1) | 1 Adv 1 EO 38 Par 1 Sped Tch 1 Stu | 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. | |
| | | Oppose not requiring impartial due process hearings, including by removing “essential systemic safeguards.” | |</p>
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<td>1 HO  (1)</td>
<td>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”.</td>
<td>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.</td>
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<td>1 HO  (1)</td>
<td>Supports the re-designation of hearing officers at all levels, Federal, State, Agency, etc. in favor of the term, “Virginia Administrative Law Judge.”</td>
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<td>1 Cit 1 SLP (2)</td>
<td>Oppose the change in terminology for Hearing Officers, and supports retaining the term and definition for “Impartial Hearing Officer.”</td>
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<td>2 Par 1 Sped Tch (3)</td>
<td>Oppose training of Hearing Officers through VDOE, rather than an outside provider.</td>
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<td>1 Par (1)</td>
<td>Supports revising the regulations regarding hearing officer training, especially since Virginia's hearing officers are often trained by attorneys who represent school boards/systems.</td>
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<tr>
<td>1 Par (1)</td>
<td>Suggests that all training for hearing officers sponsored or provided by VDOE be open to the public.</td>
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<td>1 Par (1)</td>
<td>Supports attempts to address the inadequacies in the current system through ensuring a training program for HOs.</td>
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<td>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</td>
<td>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.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>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.</td>
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<td>2 Att</td>
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<td>1 Par</td>
<td>(1)</td>
<td>Supports including a provision to ensure that hearing officers have never had previous dealings with either party involved in the due process.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>Suggests that hearing officers be required to 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.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>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.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>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.</td>
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<td>24 Par 1 PT 1 SLP 2 Stu  (54)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu  (54)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 23 Par 1 PT 1 SLP 2 Stu  (52)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>Support the inclusion of proposed B. 1. a. (1)-(5), and (7).</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>Support amending J.4. to require that LEA-maintained lists of hearing officers and qualifications to be shared with parents/the public upon request.</td>
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<td>1 Sped Adm (1)</td>
<td>Supports the VDOE ensuring timely appointment to a special education case and rigorous training and standards</td>
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<td>1 Sped Adm (1)</td>
<td>Supports the proposed regulations regarding hearing officers, as written.</td>
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<td>1 Sped Adm (1)</td>
<td>Supports clarification regarding the duration of the hearing officer’s authority.</td>
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<td><strong>Due Process - Implementation Plan</strong> (826 comments)</td>
<td>12 Adv 24 AO 4 Att 600 Cit 1 Con 1 EO 2 Int 2 LAC</td>
<td>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:  - Without them, parents will be less likely to have written guidance or timelines from the LEA regarding corrections;  - It is important not to delay the implementation of the hearing officer’s decision; and  - Without them, it could require additional legal costs to ensure implementation.</td>
<td>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</td>
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<td>1 LEA Gen 1 MD 1 OT 159 Par 1 PO 2 PT 2 PTA 3 SLP 2 Sped Tch 4 Stu (822)</td>
<td>Supports a 30 day timeline for the implementation of due process determinations and court orders.</td>
<td>completion of a due process hearing in only those cases that are fully adjudicated. Depending on the determination, 30 days may provide insufficient time for the development of a plan for a hearing officer's determination.</td>
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<td>1 Par (1)</td>
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<td>1 LEA 2 Sped Adm (3)</td>
<td>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.</td>
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<td><strong>Due Process – General</strong> 8 VAC 20-81-210 C.-O., Q.-S. (2456 comments)</td>
<td>1 HO (1)</td>
<td>Suggests that hearing officers be given limited power to hold attorneys in contempt by assessing a fine and possible suspension for 30 days.</td>
<td>It is not feasible to adopt the commenter's recommendation since there is no statutory authority to provide contempt power to administrative hearing officers. 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.</td>
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<td></td>
<td>1 AO (1)</td>
<td>Suggests that the homeless liaison be included in determining the available contact information for filing for due process.</td>
<td>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. The authority of hearing officers is limited to those specified in the federal regulations. Parents have other remedies for the recovery of expert fees.</td>
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<td>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)</td>
<td>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.</td>
<td>In 2005, the U.S. Supreme Court allocated the burden of proving the effectiveness of a student's IEP to the party challenging it. <em>Schaffer v. Weast</em>, 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 needs.</td>
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<td></td>
<td>3 Adv 6 AO 2 Att 13 Cit</td>
<td>Support amending proposed regulation D.6.a. to strike language, &quot;If the local educational agency is not the initiating party to the due process hearing proceeding,&quot; and to revise the remaining provision to state, &quot;The Special Education Hearing Officer has the discretionary authority to permit the recipient of a due process hearing in only those cases that are fully adjudicated. Depending on the determination, 30 days may provide insufficient time for the development of a plan for a hearing officer's determination.</td>
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<tr>
<td>1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>(53)</td>
<td>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.</td>
<td>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.</td>
</tr>
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<td>1 SSEAC</td>
<td>(1)</td>
<td>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.</td>
<td>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.</td>
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</table>
| 1 EO 7 Par | (8) | Suggest that all due process rights and obligations should be afforded equally to both parents and school systems. Rationales:  
• If school systems act “in loco parents” then the school system and the parents should have the same rights in bringing hearing and court requests regarding educational decisions.  
• To do otherwise, limits parental involvement in the due process system. | 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:  
• LEA has a statutory obligation to comply with the objective of the Act and the exclusive means of educational knowledge and information.  
• Schools have the obligation to provide FAPE in exchange for the federal funding they receive.  
• It leads to efficient use of judicial time and resources creating desirable incentives for school districts to articulate and communicate their educational practices. | 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. |
<p>| 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 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 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 |</p>
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<td>VDOE</td>
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<td>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.</td>
<td>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.</td>
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<td>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.</td>
<td>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.</td>
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<td>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:</td>
<td>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.</td>
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<td>• The power to make exceptions to Virginia’s statute of limitations is reserved for the General Assembly.</td>
<td>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.</td>
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<td>• Parents unfamiliar with their rights may need adequate time to bring a case, after carefully weighing the decision and information.</td>
<td>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.</td>
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<td>• Too short of a timeline may result in more cases being appealed as parties rush to protect their rights.</td>
<td>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.</td>
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<td>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:</td>
<td>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.</td>
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<td>• This will prevent a denial of a timely implementation.</td>
<td>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.</td>
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<td>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.</td>
<td>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.</td>
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<td>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.</td>
<td>Although VDOE will continue to post its redacted due process decisions to its web site, additional regulations regarding this matter are not required.</td>
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<td>1 EO</td>
<td>LAC</td>
<td>A delay in implementation would likely be the basis for additional compensatory education.</td>
<td>The hearing officer giving deference to witnesses for the school division is driven by case law in the 4th circuit.</td>
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<td>1 MD</td>
<td>38 Par</td>
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<td>It is inappropriate for these regulations to establish mandates for the Supreme Court of Virginia.</td>
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<td>1 PO</td>
<td>1 PT</td>
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<td>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.</td>
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<td>1 SLP</td>
<td>1 Sped Tch</td>
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<td>The requirement that the hearing officer &quot;may&quot; return the child to the placement from which the child was removed, etc…, mirrors the federal regulation.</td>
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<td>2 Stu</td>
<td>(81)</td>
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<td>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.</td>
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<td>3 Adv</td>
<td>11 AO</td>
<td>Oppose the proposal that requires a new resolution session with an amended due process hearing since this would delay appropriate action for the child.</td>
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<td>3 Att</td>
<td>15 Cit</td>
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<td>1 EO</td>
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<td>1 MD</td>
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<tr>
<td>2 Stu</td>
<td>(78)</td>
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<td>1 AO</td>
<td>1 At</td>
<td>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.</td>
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<td>1 Par</td>
<td>(3)</td>
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<td>1 Att</td>
<td>VDOE</td>
<td>Suggest that in 20-81-210 E., the requirement for amending a due process hearing indicate either a. or b. be met – not both.</td>
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<td>3 Adv</td>
<td>11 AO</td>
<td>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.</td>
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<td>3 Att</td>
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<td>1 EO</td>
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<td>2 Stu</td>
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<td>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</td>
<td>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 &quot;freely given when justice so requires.&quot; 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.</td>
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<td>5 AO 1 Att 1 Cit 1 EO 1 LAC 14 Par 1 PO 1 SLP 1 Sped Tch 1 Stu</td>
<td>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.</td>
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<td>1 Att 2 Par</td>
<td>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.”</td>
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<td>1 Att 2 Par</td>
<td>Support Deleting 210 D. 1. a. in its entirety, regarding the LEA “advising” the parent in writing of a request for due process.</td>
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<td>1 VDOE</td>
<td>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.</td>
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<td>6 AO 2 Att 9 Cit</td>
<td>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</td>
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<td>28 Par 1 EO 1 LAC 1 MD 1 PO 1 PT 1 SLP 1 Sped Tch 1 Stu (53)</td>
<td>times. Given that USDOE has indicated intent to provide guidance on this topic, suggests that this is premature.</td>
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| 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:  
• VDOE should not be permitted to make edits unless the parents’ attorney may also edit. | | |
<p>| 3 Adv 6 AO 3 Att 14 Cit 1 EO 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. | | |</p>
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| 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  |       | 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. |               |
|       | (53)   |          |               |
| 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  |       | 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. |               |
|       | (78)   |          |               |
| 1 Cit  |       | 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." |               |
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<td>1 Sped Adm</td>
<td>(1) Supports not requiring briefs as a condition of a hearing officer rendering a decision.</td>
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<td>1 Att</td>
<td>(1)</td>
<td>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.</td>
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<td>1 Par</td>
<td>1 Sped Adm</td>
<td>(2) Support specification of the procedures for requesting a due process hearing.</td>
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<td>1 Par</td>
<td>(1)</td>
<td>Opposes allowing VDOE to remove itself from being a party to a due process hearing.</td>
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<td>3 Adv</td>
<td>6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>(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.</td>
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<td>3 Adv</td>
<td>6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>(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.”</td>
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<td>3 Adv</td>
<td>6 AO 2 Att 13 Cit 1 MD</td>
<td>Support amending L. 2. to clarify that parents need not use the due process complaint form provided by the LEA.</td>
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<td>24 Par 1 PT 1 SLP 2 Stu</td>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu (55)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>Support amending J. to require that Virginia continue to provide hearing decisions and appeal information through regular updates to its webpage. This informs parents.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
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<td>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.</td>
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<td>Recommend change A. to indicate that parties can file due process complaints &quot;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&quot; and 1415(f), which requires due process hearings for disciplinary matters under 1415(k).</td>
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<td>Supports proposed F.3 which permits school districts to ask the hearing officer for a 45-day extension of the interim alternative educational setting, &quot;when school personnel believe that the child's return to the regular placement would result in injury to the student or others&quot;.</td>
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<td>Recommends correction to F.1 to add the word &quot;substantially&quot; 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.</td>
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<td>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.</td>
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<td>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 &quot;any other direct or indirect means to obstruct the filing of an action.&quot;</td>
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<td>24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>Support a revision to D.6 to provide that issues not included in the due process complaint may be raised at a hearing if &quot;the other party agrees otherwise.&quot;</td>
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<td>1 Par (1)</td>
<td>Recommends that if a parent prevails at a due process hearing, the hearing officer should have authority to grant attorney's/advocate's fees.</td>
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<td>1 Att (1)</td>
<td>Suggests that jurisdiction for attorneys' fees resides only with a federal court.</td>
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<td>1 Att (1)</td>
<td>Notes that the reference to subsection G. in 8 VAC 20-81-210 R. 3. is incorrect.</td>
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<td>1 Par (1)</td>
<td>Opposes hearing officer giving deference to witnesses for the LEA.</td>
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<td>1 Att 2 Par (3)</td>
<td>Support amending 210 F. 1. a. to state, &quot;The Virginia Department of Education shall contact the Supreme Court of Virginia for the appointment of the Special Education Hearing Officer.&quot;</td>
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<td>1 Att</td>
<td>Support amending 210 F. 1. as follows: &quot;1. Within one business days of receipt</td>
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<td>2 Par</td>
<td>of the request for a hearing,&quot; 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.&quot;</td>
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<td>1 Att 2 Par</td>
<td>Support amending F.1. to state, &quot;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.&quot;</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>Support amending N.13.c.(1) to state that the hearing officer is &quot;required to&quot; (opposed to &quot;may&quot;) 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.</td>
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<td>3 Adv 6 AO</td>
<td>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</td>
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<td>2 Att</td>
<td>13 Cit</td>
<td>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.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>Support amending proposed provision C.1. to permit parents to file actions seeking compensatory education for more than 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.</td>
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<td>1 Att</td>
<td>2 Par</td>
<td>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.</td>
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<td>1 Att</td>
<td>2 Par</td>
<td>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.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>Support deleting 210 F. 1. c. in its entirety.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>Support implementation of M.19, specifying the hearing officer’s obligations when a manifestation determination is at issue.</td>
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| 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 | |
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<tr>
<td>13 Cit</td>
<td>1 MD</td>
<td>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.</td>
<td>Support the inclusion of H.1. to H. 5. as consistent with federal and state law.</td>
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<td>1 MD</td>
<td>1 MD</td>
<td>Support VDOE providing parents the same access to the electronic IDELR library during due process hearings as is provided to hearing officers and LEAs.</td>
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<td>1 Par</td>
<td>1 Att</td>
<td>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.)</td>
<td>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.)</td>
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<td>1 Par</td>
<td>1 Par</td>
<td>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.</td>
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<td>1 Par</td>
<td>1 Par</td>
<td>Opposes proposed change which prevents a foster parent or social worker from requesting due process on a child's behalf.</td>
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<td>3 Cit</td>
<td>2 Par</td>
<td>Generally oppose the changes in the due process section, and supports maintaining existing provisions.</td>
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<td>1 Par</td>
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<td>Supports requiring that the parent and the LEA be informed of the identity of the hearing officer appointed for their hearing.</td>
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<td><strong>Due Process – Resolution Sessions</strong>&lt;br&gt;8 VAC 20-81-210 O. 1. - O.5., and P. 2.&lt;br&gt;(526 comments)</td>
<td>1 AO (1)</td>
<td>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.</td>
<td>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.</td>
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<td>3 Adv 13 AO 2 Att 23 Cit 1 LAC 1 MD 50 Par 1 PO 2 PT 2 SLP 3 Stu (101)</td>
<td>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.</td>
<td>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. 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.</td>
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<td>3 Adv 4 AO 3 Att 1 Cit 1 EO 1 LAC 31 Par 1 Psy 1 Sped Tch 2 Stu (48)</td>
<td>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.</td>
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<td>1 AO 1 Att 1 Par (3)</td>
<td>Suggest adding language requiring resolution sessions to be confidential, helping to ensure open and honest discussion and a greater likelihood that settlement could occur.</td>
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<td>1 Att (1)</td>
<td>Opposes the imbalance between the rights of the parent and the rights of the LEA in resolution sessions.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT</td>
<td>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.</td>
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<td>1 SLP 2 Stu</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
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<td>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.</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 1 Stu</td>
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<td>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.</td>
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<td>3 Adv 6 AO 2 Att 14 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
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<td>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.</td>
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<td>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.</td>
<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu (53)</td>
<td>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.</td>
<td>It is not feasible to adopt the commenter’s recommendation since the Code of Virginia allows for non-attorney representation at a hearing.</td>
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<td>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.</td>
<td>1 LEA (1)</td>
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<td>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.</td>
<td>2 Sped Adm (2)</td>
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<td>Suggests that the regulations specify what assistance (courts, agencies) the LEA may have in finding and assigning surrogate parents.</td>
<td>1 Gen Ed (1)</td>
<td></td>
<td>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.</td>
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<td>Supports these regulations which are in line with the federal regulations.</td>
<td>1 Sped Adm (1)</td>
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<td>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</td>
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<td>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.</td>
<td>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. 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. The definition of parent in the proposed regulations takes into consideration both federal and state regulations.</td>
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<td>1 AO 1 Par</td>
<td>(2)</td>
<td>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.</td>
<td>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. 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.</td>
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<td>3 Adv 7 AO 3 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
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<td>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.</td>
<td>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. 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. 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.</td>
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<td>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</td>
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<td>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.</td>
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<tr>
<td>1 AO</td>
<td>(1)</td>
<td>Recommends revising 8 VAC 20-81-220 B. 2, to state, &quot;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.</td>
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<td>Supports language in B.5 which provides that the local educational agency shall establish procedures for determining whether a child needs a surrogate parent.</td>
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<td>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.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>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.”</td>
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<td>2 Att</td>
<td>Suggest deleting B.1.c. which relates to those children in the custody of social services.</td>
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<td>3 Adv</td>
<td>6 AO</td>
<td>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</td>
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<td>2 Att 13 Cit 1 MD 24 Par 1 PT 1 SLP 2 Stu</td>
<td>parent.*</td>
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<td>3 Adv 6 AO 2 Att 13 Cit 1 MD 25 Par 1 PT 1 SLP 2 Stu</td>
<td>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.”</td>
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<tr>
<td>Annual Plan</td>
<td>1 LAC 3 Par 1 SLP</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>8 VAC 20-81-230 B (115 comments)</td>
<td>6 Adv 12 AO 4 Att 26 Cit 2 MD 52 Par 2 PT 2 SLP 4 Stu</td>
<td>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.</td>
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<td>Funding - General (except Early Intervening Services)</td>
<td>1 Sped Adm</td>
<td>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.</td>
<td>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.</td>
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<tr>
<td>8 VAC 20-81-230 C, 8 VAC 20-81-240 to 8 VAC 20-81-290 (161 comments)</td>
<td>1 Par</td>
<td>Opposes budget cuts in preschool special education programs since early</td>
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<td></td>
<td>(1)</td>
<td>intervention is necessary for success.</td>
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<td></td>
<td>3 Adv</td>
<td>Support implementing 20-81-250, State funds for local school divisions, as proposed.</td>
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<td>3 Adv</td>
<td>Support implementing 20-81-260, Federal funds, as proposed.</td>
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<td>3 Adv</td>
<td>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.</td>
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Local Advisory Committees (LAC)  
8 VAC 20-81-230 D.  
(2,859 comments)  
3 Adv  
2 PO  
1 PRC  
12 Prin  
36 Sped Adm  
16 Sped Tch  
1 Sup  
1 SW  
(72)  
16 Adv  
Oppose allowing LEA personnel to act as voting members on LACs due to a  
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:  
• 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;  
• require that a majority of the committee be parents of
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<tr>
<td>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</td>
<td>conflict of interest.</td>
<td>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. Additionally, VDOE will recommend language wherein the LAC composition will include a teacher.</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td>Support membership and voting rights for school personnel. 1 Sup indicated the restriction could be discriminatory.</td>
<td></td>
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</tr>
<tr>
<td>1 AO 1 Gen ed 2 LEA Gen 1 Par 1 PO 1 SLP 3 Sped Tch</td>
<td>Suggest that at least one special education classroom teacher be a voting member of the LAC.</td>
<td></td>
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</tr>
<tr>
<td>9 Adv 12 AO 1 Att 602 Cit</td>
<td>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.</td>
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<tr>
<td>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</td>
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<td></td>
<td>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.</td>
</tr>
<tr>
<td>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</td>
<td></td>
<td></td>
<td>Support the continued requirement of Local Advisory Committees.</td>
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<tr>
<td>8 VAC 20-81-230 G.</td>
<td>(53 comments)</td>
<td>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.</td>
<td>The proposed provisions are consistent with IDEA and federal regulations.</td>
</tr>
<tr>
<td>8 VAC 20-81-230 K.</td>
<td>(118 comments)</td>
<td>Suggests that the regulations indicate that LACs not be allowed to meet in closed session.</td>
<td>Supports 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.</td>
</tr>
<tr>
<td>8 VAC 20-81-230 K.</td>
<td>(118 comments)</td>
<td>Suggests clarifications and modifications of roles of the LAC.</td>
<td>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.</td>
</tr>
<tr>
<td>8 VAC 20-81-230 K.</td>
<td>(118 comments)</td>
<td>Support maintaining current provisions related to LACs.</td>
<td>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.</td>
</tr>
<tr>
<td>8 VAC 20-81-230 K.</td>
<td>(118 comments)</td>
<td>Suggests that the requirement for LACs be dropped due to difficulties with attendance.</td>
<td>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.</td>
</tr>
<tr>
<td>Infant and Toddler Transition/ Part C to Part B (except IEP meeting notice and composition)</td>
<td></td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>Infant and Toddler Transition/ Part C to Part B (except IEP meeting notice and composition)</td>
<td></td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>Infant and Toddler Transition/ Part C to Part B (except IEP meeting notice and composition)</td>
<td></td>
<td>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.</td>
<td>Student eligibility for NIMAS/NIMAC is the result of copyright</td>
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National Instructional Materials Accessibility Center (NIMAC)/ National Accessibility Materials Accessibility Standard (NIMAS) | | 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. |
<p>| National Instructional Materials Accessibility Center (NIMAC)/ National Accessibility Materials Accessibility Standard (NIMAS) | | 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. | 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. |
| National Instructional Materials Accessibility Center (NIMAC)/ National Accessibility Materials Accessibility Standard (NIMAS) | | | Student eligibility for NIMAS/NIMAC is the result of copyright |</p>
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<td>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.</td>
<td>laws and federal regulations.</td>
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<td>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.”</td>
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<tr>
<td>State Operated Programs Educational Responsibility</td>
<td>8 VAC 20-81-320</td>
<td>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.</td>
<td>The Virginia Standards of Quality have a provision for professional development which includes provisions for students with disabilities. To require that in these regulations would be redundant. Consistent with federal regulations, the requirement for CSPD was deleted.</td>
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<td>Section 504</td>
<td>3 Adv, 6 AO</td>
<td>Support implementing the Section 504 section as proposed which allows</td>
<td>Because IDEA encompasses requirements from Section 504, the hearing officers</td>
</tr>
<tr>
<td>8 VAC 20-81-330</td>
<td>2 Att, 13 Cit</td>
<td>localities to use the state hearing officer system at their own expense.</td>
<td>are trained in the requirements of Section 504. It is, therefore, appropriate</td>
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<tr>
<td>(53 comments)</td>
<td>1 MD, 24 Par</td>
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<td>for LEAs to use the hearing officer system to resolve disputes on Section 504</td>
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<td>requirements.</td>
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REGULATIONS GOVERNING
SPECIAL EDUCATION
PROGRAMS FOR CHILDREN
WITH DISABILITIES
IN VIRGINIA

(Effect Version)
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 1-800-292-3820. Copies of these regulations are also available on the Virginia Department of Education’s Web site at: www.doe.virginia.gov/VDOE/dueproc
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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as amended
APPENDIX A

Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act

Figure 2: Values for students receiving Level 1 services when combined with students receiving Level 2 services

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

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§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 1/2 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 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 [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: (§22.1-243 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 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/l]anguage 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 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 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
institutions that collect, maintain, or use 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 under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of the Virginia schools. (§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))
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, 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. [Requires 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. [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.
8. 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.
8a. 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.
8b. The child is in foster care and a resident of Virginia, but not 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 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. No adult child shall have more than one residence at a time.

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
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]
         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 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. 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(c))

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.


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

   a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;
   b. Implement procedures for maintaining the confidentiality of all data;
   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

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...]

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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.

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.

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.

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

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.

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.

Any nonstandardized tests 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.

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

Tests 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 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).
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.

Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

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.

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.

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.

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.

- 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.
- 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(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.
   b. The local educational agency shall [1] Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8VAC20-81-170.
   2. Ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
   [(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child 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 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].

[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.

I. 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. 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 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 [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.

[ML]. 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. 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.

[NM]. 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.

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.

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 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.]

[SQ. 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 300.311 and 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 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) [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;
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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.

[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.]

[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.

   [TX]. 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 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.

[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, 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))]

[DF]. 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
   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 CFR300.350(a) 34 CFR300.323 (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.

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))

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)[(a) and (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.

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.
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;
   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. 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] 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.

[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 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, 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. 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. (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. (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 [school]). 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 Virginia [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.  [\(\text{34 CFR 300.133(a)}\)]

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.  [\(\text{34 CFR 300.133(d)}\)]

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
      (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.
      For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.

   a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to continue to participate in the general educational curriculum, although in another setting;
   (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.


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] 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))]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 [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.

   [cd] 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.
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[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) 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 3a 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) 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 300.151 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 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 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 [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 the 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

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.
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)

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 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;
   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
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.

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 [or Supreme Court of Virginia] revokes such authority by removing or disqualifying the special education hearing officer.

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.

[IK]. 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
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].

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 [C 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.

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.

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.

[MO]. 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].
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.

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.

[QQ]. 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)' 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 4 of this subsection, a party may void the agreement within three business days of the agreement's execution.

6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision [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 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-1]-[E-1] 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
device 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
b. The appointed surrogate parent is no longer eligible according to subsection [DE] of this section.

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.

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.
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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.

[EF]. 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))


   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.


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.) \([34\text{ CFR 300.16, 34 CFR 300.202 and Appendix A}]\)

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 \([34\text{ CFR 300.203 and } 34\text{ CFR 300.204}])\)

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[s] 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[s]] 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.
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)


   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 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


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)
### Special education caseload staffing requirements.

#### Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act.

<table>
<thead>
<tr>
<th>Disability Category</th>
<th>Level II</th>
<th>Level I</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With Paraprofessional 100% of the time</td>
<td>Without Paraprofessional 100% of the Time</td>
</tr>
<tr>
<td>Autism</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Deaf-blindness</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Developmental Delay: age 5-8</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Developmental Delay: age 2-5</td>
<td>8 Center-based 10 Combined</td>
<td>12 Home-based and/or Itinerant</td>
</tr>
<tr>
<td>Emotional [Disturbance Disability]</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Hearing Impairment/Deaf</td>
<td>10</td>
<td>408</td>
</tr>
<tr>
<td>Learning Disability</td>
<td>10</td>
<td>408</td>
</tr>
<tr>
<td>Intellectual Disability</td>
<td>10</td>
<td>408</td>
</tr>
<tr>
<td>Multiple Disabilities</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Orthopedic Impairment</td>
<td>10</td>
<td>408</td>
</tr>
<tr>
<td>Other Health Impaired</td>
<td>10</td>
<td>408</td>
</tr>
<tr>
<td>Speech or Language Impairment</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Traumatic Brain Injury</td>
<td>May be placed in any program, according to the IEP.</td>
<td></td>
</tr>
<tr>
<td>Combined group of students needing Level I services with students needing Level II services</td>
<td></td>
<td>20 Points (see Figure 2)</td>
</tr>
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Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

<table>
<thead>
<tr>
<th>Disability Category</th>
<th>Level II Values</th>
<th>Level I</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>With Paraprofessional 100% of the time</td>
<td>Without Paraprofessional 100% of the time</td>
</tr>
<tr>
<td>Autism</td>
<td>2.5</td>
<td>3.3</td>
</tr>
<tr>
<td>Deaf-blindness</td>
<td>2.5</td>
<td>3.3</td>
</tr>
<tr>
<td>Developmental Delay: age 5 - 8</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Emotional [Disturbance Disability]</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Hearing Impairment/Deaf</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Learning Disability</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Mental Retardation [Mental Retardation Intellectual Disability]</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Multiple Disabilities</td>
<td>2.5</td>
<td>3.3</td>
</tr>
<tr>
<td>Orthopedic Impairment</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Other Health Impairment</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Severe Disabilities [Severe Disabilities]</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Traumatic Brain Injury</td>
<td>2.0</td>
<td>2.5</td>
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REGULATIONS GOVERNING
SPECIAL EDUCATION
PROGRAMS FOR CHILDREN
WITH DISABILITIES
IN VIRGINIA

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
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

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)
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 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 CFR 300.172)

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 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.

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))
8VAC20-81. 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 §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 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.

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:
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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. 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
   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.

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, Rhett's 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.  
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.

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)
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:

1. A local school division;

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 CFR300.323 (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)' 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 (Virginia School). 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 Virginia school, 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.
   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.


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 1a and 1b 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.


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.
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


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.

<table>
<thead>
<tr>
<th>Disability Category</th>
<th>Level II</th>
<th>Level I</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With Paraprofessional 100% of the time</td>
<td>Without Paraprofessional 100% of the Time</td>
</tr>
<tr>
<td>Autism</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Deaf-blindness</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Developmental Delay: age 5-8</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Developmental Delay: age 2-5</td>
<td>8 Center-based 10 Combined</td>
<td>12 Home-based and/or Itinerant</td>
</tr>
<tr>
<td>Emotional Disability</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Hearing Impairment/Deaf</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Learning Disability</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Intellectual Disability</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Multiple Disabilities</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Orthopedic Impairment</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Other Health Impaired</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Speech or Language Impairment</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Traumatic Brain Injury</td>
<td>May be placed in any program, according to the IEP.</td>
<td></td>
</tr>
<tr>
<td>Combined group of students needing Level I services with students needing Level II services</td>
<td></td>
<td>20 Points (see Figure 2)</td>
</tr>
</tbody>
</table>
Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

<table>
<thead>
<tr>
<th>Disability Category</th>
<th>Level II Values</th>
<th>Level I</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With Paraprofessional</td>
<td>Without Paraprofessional</td>
</tr>
<tr>
<td></td>
<td>100% of the time</td>
<td>100% of the time</td>
</tr>
<tr>
<td>Autism</td>
<td>2.5</td>
<td>3.3</td>
</tr>
<tr>
<td>Deaf-blindness</td>
<td>2.5</td>
<td>3.3</td>
</tr>
<tr>
<td>Developmental Delay: age 5 - 8</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Emotional Disability</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Hearing Impairment/Deaf</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Learning Disability</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Intellectual Disability</td>
<td>2.0</td>
<td>2.5</td>
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<tr>
<td>Multiple Disabilities</td>
<td>2.5</td>
<td>3.3</td>
</tr>
<tr>
<td>Orthopedic Impairment</td>
<td>2.0</td>
<td>2.5</td>
</tr>
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<td>Other Health Impairment</td>
<td>2.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Traumatic Brain Injury</td>
<td>2.0</td>
<td>2.5</td>
</tr>
</tbody>
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