

CHAPTER 40

REGULATIONS GOVERNING EDUCATIONAL SERVICES FOR GIFTED STUDENTS

8VAC20-40-10. Applicability.

This chapter shall apply to all local school divisions in the Commonwealth, regarding their gifted education services for students from kindergarten through twelfth grade.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from VR270-01-0002 § 1.1, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-20. Definitions.

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

"Appropriately differentiated curriculum and instruction" means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction; (ii) original research or production; (iii) problem finding and solving; (iv) higher level thinking that leads to the generation of products; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes, and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers.

"Eligible student" means a student who has been identified as gifted by the identification and placement committee for the school division's gifted education program.

"Gifted students" means those students in public elementary, middle, and secondary schools beginning with kindergarten through twelfth grade who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age, experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated aptitudes in one or more of the following areas:

1. General intellectual aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers.

2. Specific academic aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas that include English, history and social science, mathematics, or science.

3. Career and technical aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent technical curiosity; advanced use of technical language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in career and technical fields.

4. Visual or performing arts aptitude. Such students demonstrate or have the potential to demonstrate superior creative reasoning and imaginative expression; persistent artistic curiosity; and advanced acquisition and mastery of techniques, perspectives, concepts, and principles beyond their age-level peers in visual or performing arts.

"Identification" means the multistaged process of finding students who are eligible for service options offered through the division's gifted education program. The identification process begins with a divisionwide screening component that is followed by a referral component, and that concludes with the determination of eligibility by the school division's identification and placement committee or committees. The identification process includes the review of valid and reliable student data based on criteria established and applied consistently by the school division. The process shall include the review of information or data from multiple sources to determine whether a student's aptitudes and learning needs are most appropriately served through the school division's gifted education program.

"Identification and placement committee" means the building-level or division-level committee that shall determine a student's eligibility for the division's gifted education program, based on the student's assessed aptitude and learning needs. The identification and placement committee shall determine which of the school division's service options are appropriate for meeting the learning needs of the eligible student.

"Learning needs of gifted students" means gifted students' needs for advanced and complex content that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem-solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.

"Placement" means the determination of the appropriate educational options for each eligible student.

"Referral" means the formal and direct process that parents or legal guardians, teachers, professionals, students, peers, self, or others use to request that a kindergarten through twelfth-grade student be assessed for gifted education program services.

"Screening" means the annual process of creating a pool for candidates from kindergarten through twelfth grade using multiple criteria through the referral process, the review of current assessment data, or other information from other sources. Screening is the active search for students who are then referred for the formal identification process.

"Service options" means the instructional approaches, settings, and staffing selected for the delivery of appropriate service or services provided to eligible students based on their assessed needs in their areas of strength.

"Student outcomes" means the advanced achievement and performance expectations established for each gifted student, through the review of the student's assessed learning needs and the goals of the program of study, that are reviewed and reported to parents or legal guardians.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from VR270-01-0002 § 1.2, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-30. (Repealed.)

Historical Notes

Derived from VR270-01-0002 § 2.1, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; repealed, Virginia Register Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-40. Screening, referral, identification, and service.

A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are gifted in general intellectual or specific academic aptitude. If the school division elects to identify students in general intellectual aptitude, it shall provide service options from kindergarten through twelfth grade. Identification in a specific academic aptitude area may occur as assessment instruments exist to support identification. If the school division elects to identify students in one or more selected

academic aptitude areas, it shall provide service options through twelfth grade. School divisions may identify and serve gifted students in career and technical aptitude or visual or performing arts aptitude, or both, at their discretion.

B. These uniform procedures shall include a screening process that requires instructional personnel to review, at a minimum, current assessment data on each kindergarten through twelfth-grade student annually. Some data used in the screening process may be incorporated into multiple criteria reviewed by the designated identification and placement committee to determine eligibility, but those data shall not replace norm-referenced aptitude test data.

C. These uniform procedures shall permit referrals from parents or legal guardians, teachers, professionals, students, peers, self, or others. Such referrals shall be accepted for kindergarten through twelfth-grade students.

D. An identification and placement committee shall review pertinent information, records, and other performance evidence for referred students. The committee shall consider input from a professional who knows the child. The committee shall include classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education. The committee shall (i) review data from multiple sources selected and used consistently within the division to assess students' aptitudes in the areas of giftedness the school division serves, (ii) determine whether a student is eligible for the division's services, and (iii) determine which of the school division's service options match the learning needs of the eligible student. The committee may review valid and reliable data administered by another division for a transfer student who has been identified previously.

1. Identification of students for the gifted education program shall be based on multiple criteria established by the school division and designed to seek out those students with superior aptitudes, including students for whom accurate identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. Data shall include scores from valid and reliable instruments that assess students' potential for advanced achievement, as well as instruments that assess demonstrated advanced skills, conceptual knowledge, and problem-solving aptitudes.

2. Valid and reliable data for each referred student shall be examined by the building-level or division-level identification and placement committee. The committee shall determine the eligibility of each referred student for the school division's gifted education services. Students who are found eligible by the identification and placement committee shall be offered service options with appropriately differentiated curriculum and instruction by the school division.

3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:

- a. Assessment of appropriate student products, performance, or portfolio;
- b. Record of observation of in-classroom behavior;

- c. Appropriate rating scales, checklists, or questionnaires;
 - d. Individual interview;
 - e. Individually administered or group-administered, nationally norm-referenced aptitude or achievement tests;
 - f. Record of previous accomplishments (such as awards, honors, grades, etc.); or
 - g. Additional valid and reliable measures or procedures.
4. If a program is designed to address general intellectual aptitude, an individually administered or group-administered, nationally norm-referenced aptitude test shall be included as one of the three measures used in the school division's identification procedure.
5. If a program is designed to address specific academic aptitude, an individually administered or group-administered, nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used in the school division's identification procedures.
6. If a program is designed to address either the visual or performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as a part of the data reviewed by the identification and placement committee.
- E. Within 90 instructional days, beginning with the receipt of a parent's or legal guardian's consent for assessment, the identification and placement committee shall determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision. If a student is identified as gifted and eligible for services, the identification and placement committee shall determine which service options most effectively meet the assessed learning needs of the student. Identified gifted students shall be offered placement in an instructional setting that provides:
- 1. Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students; and
 - 2. Monitored and assessed student outcomes that are reported to the parents and legal guardians.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from VR270-01-0002 § 2.2, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-50. (Repealed.)

Historical Notes

Derived from VR270-01-0002 § 2.3, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; repealed, Virginia Register Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-55. Parental rights for notification, consent, and appeal.

A. School divisions shall provide written notification to and seek written consent from parents and legal guardians to:

1. Conduct any required assessment to determine a referred student's eligibility for the school division's gifted education program;
2. Announce the decision of the identification and placement committee regarding a referred student's eligibility for and placement in the school division's gifted education program; and
3. Provide services for an identified gifted student in the school division's gifted education program.

B. Each school division shall adopt a review procedure for students whose cases are appealed. This procedure shall involve a committee, the majority of whose members did not serve on the initial identification and placement committee, and shall inform parents or legal guardians, in writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 instructional days of receipt of notification of the action by the division. The process shall include an opportunity to meet with an administrator to discuss the decision.

1. A parent or legal guardian of a student who was referred but not identified by the identification and placement committee as eligible for services in the school division's gifted education program shall be informed, in writing, within 10 instructional days, of the school division's process to appeal the committee's decision.

2. A parent or legal guardian of an identified gifted student may appeal any action taken by the school division to change the student's identification for, placement in, or exit from the school division's gifted education program.

C. Following the notification and consent of a parent or legal guardian, the identification and placement committee shall apprise school administrators of each student's eligibility status.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-60. Local plan, local advisory committee, and annual report.

A. Each school board shall submit a comprehensive plan for the education of gifted students to the Department of Education (DOE) for technical review on a schedule determined by the department. Each school board shall approve a comprehensive plan for the education of gifted students that includes the components identified in these regulations. The development process for the school division's local plan for the education of the gifted shall include opportunities for public review of the school division's plan. The approved local plan shall be accessible through the school division's website and the school division shall ensure that printed copies of the comprehensive plan are available to citizens who do not have online access. The plan shall include the following components:

1. A statement of philosophy for the gifted education program and the local operational definition of giftedness for the school division;
2. A statement of the school division's gifted education program goals and objectives for identification, delivery of services, curriculum and instruction, professional development, equitable representation of students, and parent and community involvement;
3. Procedures for the early and on-going screening, referral, identification and placement of gifted students, beginning with kindergarten through twelfth-grade in at least a general intellectual or a specific academic aptitude program; and, if provided in the school division, procedures for the screening, referral, identification, and placement of gifted students in visual or performing arts or career and technical aptitude programs;
4. A procedure for written notification of parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission of parents or legal guardians prior to placement of a gifted student in the appropriate service options;
5. A policy for written notification to parents or legal guardians of identification and placement decisions, including initial changes in placement or exit from the program. Such notice shall include an opportunity for parents or guardians to meet and discuss their concerns with an appropriate administrator and to file an appeal;
6. Assurances that student records are maintained in compliance with applicable state and federal privacy laws and regulations;
7. Assurances that (i) the selected and administered testing and assessment materials have been evaluated by the developers for cultural, racial, and linguistic biases; (ii) identification procedures are constructed so that those procedures may identify high potential or aptitude in any

student whose accurate identification may be affected by economic disadvantages, by limited English proficiency, or by disability; (iii) standardized tests and other measures have been validated for the purpose of identifying gifted students; and (iv) instruments are administered and interpreted by a trained personnel in conformity with the developer's instructions;

8. Assurances that accommodations or modifications determined by the school division's special education Individualized Education Program (IEP) team, as required for the student to receive a free appropriate public education, shall be incorporated into the student's gifted education services;

9. Assurances that a written copy of the school division's approved local plan for the education of the gifted is available to parents or legal guardians of each referred student, and to others upon request;

10. Evidence that gifted education service options from kindergarten through twelfth grade are offered continuously and sequentially, with instructional time during the school day and week to (i) work with their age-level peers, (ii) work with their intellectual and academic peers, (iii) work independently, and (iv) foster intellectual and academic growth of gifted students. Parents and legal guardians shall receive assessment of each gifted student's academic growth;

11. A description of the school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content;

12. Policies and procedures that allow access to programs of study and advanced courses at a pace and sequence commensurate with their learning needs;

13. Evidence that school divisions provide professional development based on the teacher competencies outlined in 8VAC20-542-310 related to gifted education; and

14. Procedures for the annual review of the effectiveness of the school division's gifted education program, including the review of screening, referral, identification, and program procedures toward the achievement of equitable representation of students, the review of student outcomes and the academic growth of gifted students. Such review shall be based on multiple criteria and shall include multiple sources of information.

B. Each school division may establish a local advisory committee composed of parents, school personnel, and other community members who are appointed by the school board. This committee shall reflect the ethnic and geographical composition of the school division. This committee shall have two responsibilities: (i) to review annually the local plan for the education of gifted students, including revisions, and (ii) to determine the extent to which the plan for the previous year was implemented. The findings of the annual program effectiveness and the recommendations of the advisory committee shall be submitted annually in writing to the division superintendent and the school board.

C. Each school division shall submit an annual report to the Department of Education in a format prescribed by the department.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from VR270-01-0002 § 2.4, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.

8VAC20-40-70. Funding.

Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the appropriation act.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from VR270-01-0002 § 2.5, eff. June 25, 1986; amended, Virginia Register Volume 11, Issue 9, eff. February 22, 1995; Volume 26, Issue 22, eff. July 21, 2010; Errata, 26:23 VA.R. 2777 July 19, 2010.
