

**SPECIAL EDUCATION AND
RELATED SERVICES
IN LOCAL AND REGIONAL JAILS:
GUIDELINES FOR BEST PRACTICE**

VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

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Virginia Department of Education
Division of Special Education and Student Services
Web site: www.doe.virginia.gov/special_ed/index.shtml

PREFACE

This document is designed to assist school divisions implement special education and related services to eligible inmates in local and regional jails in Virginia. The provision of educational services to inmates that increases their literacy and vocational aptitude enhances the possibility that they will successfully re-enter society following release from incarceration.

Although not a substitute for special education laws and regulations, these Guidelines offer regulatory information to responsible parties in order for them to meet their obligations under state and federal law and regulations and local school board policy. Readers should refer to the statutes and regulations cited below for greater detail.

LEGISLATION, RULES, AND REGULATIONS

As required by the provisions of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA '04) and its implementing federal and state regulations, the Virginia Department of Education (VDOE) must ensure that all students with disabilities age 2 through 21, inclusive, have available a free appropriate public education (FAPE) (See also *Virginia Code* §22.1-214). A free appropriate public education includes, among other things, special education and related services required to meet the individual educational needs of students with disabilities. In addition, IDEA '04 and its implementing regulations provide certain procedural safeguards for students with disabilities. The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (Virginia Regulations), effective on July 7, 2009, and reissued on January 25, 2010, at 8 VAC 20-81-10 *et seq.* outline Virginia's implementation of IDEA '04 and are referred to throughout this document. The Virginia Regulations are available online at http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf.

OVERVIEW

Regulations Governing Special Education Programs for Children with Disabilities in Virginia require each school division to provide special education and related services to all students with disabilities incarcerated for more than 10 days in a local or regional jail in its jurisdiction. In addition, as a best practice, school divisions and jails should ensure that a system of communication between education and other personnel, including jail staff, is provided which ensures coordination of program objective(s), continuity of service(s) in the transition of a student into the educational program of the jail, subsequent utilization of other educational programs, and receipt of services from other agencies. 8 VAC 20-81-230 G

FUNCTIONS OF THE VIRGINIA DEPARTMENT OF EDUCATION, SCHOOL DIVISIONS, AND JAIL FACILITIES

As a matter of regulation and practice, the Virginia Department of Education (VDOE) is responsible for the following functions:

VIRGINIA DEPARTMENT OF EDUCATION:

- ◆ Provides annual funding for staff, materials and supplies, equipment, travel, and professional development;
- ◆ Approves interagency agreements annually between school divisions and local and regional jails for the operation of special education programs for eligible students incarcerated more than ten calendar days;
- ◆ Provides technical assistance and consultative services in the interpretation and implementation of state and federal laws and regulations pertaining to the education of students;
- ◆ Monitors provision of special education services through existing administrative review of school division programs; and
- ◆ Disseminates relevant information derived from research, demonstration program, and projects involving the students.

Each school division with a local or regional jail in its jurisdiction must establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement must address staffing and security issues associated with the provision of special education and related services in the jail. A copy of the interagency agreement and any revisions to the agreement must be submitted to the VDOE. 8 VAC 20-81-30 B.6.; 8 VAC 20-81-230 G.

The interagency agreement between the school division and the jail facility typically divides the following functions:

SCHOOL DIVISIONS:

- ◆ Ensure a free appropriate public education is being provided to all eligible students;
- ◆ Provide appropriately qualified special education teacher(s);
- ◆ Provide special education and related services in accordance with Individualized Educational Program (IEP) for the duration of the education program (instructional programming must be available 12 months per year if required by an IEP);
- ◆ Supervise these employees through the director of special education and provide them with all contractual benefits afforded to employees in comparable positions;
- ◆ Provide classroom books and materials necessary to meet the IEP goals and objectives of the students;
- ◆ Provide appropriate equipment to enhance and facilitate learning;
- ◆ Provide referral, evaluation, eligibility, and transition services 12 months per year;
- ◆ Provide professional development and educational opportunities for special education staff to meet accreditation requirements;
- ◆ Work cooperatively with the jail staff and other agencies, as appropriate, to implement jail educational programs; and
- ◆ Comply with the policies, procedures and guidelines as established for the jail.

JAIL FACILITIES:

- ◆ Provide classroom, office space and appropriate furniture;
- ◆ Provide security, including screening of students who are high security risks or of students who must be kept separate from one another;
- ◆ Provide information concerning inmates that is necessary to facilitate the eligibility process;
- ◆ Provide a liaison to coordinate (facilitate) the interaction between educational staff and jail staff;
- ◆ Provide for the use of telephone, fax equipment, and copy machine;

- ◆ Transport students to and from the classroom;
- ◆ Provide the use of the library as appropriate;
- ◆ Provide comprehensive orientation and training, as appropriate, to education staff;
- ◆ Include education staff in staff meetings as appropriate; and
- ◆ Work cooperatively with the school division and other agencies, as appropriate, to implement jail education programs.

PROGRAM DESCRIPTION

Students are incarcerated in local and regional jails for various lengths of time and have a variety of instructional needs and abilities. The instructional program for each student must be tailored to fit his/her individual needs.

The school division staff is responsible for evaluation efforts and education placement within the jail in accordance with the student's IEP. Special education programs in local and regional jails are designed to enhance the student's current level of functioning and provide opportunities for student success. Based on the student's IEP, the scope of the education services provided may include:

- ◆ Educational assessment
- ◆ Speech/language therapy
- ◆ Physical therapy
- ◆ Occupational therapy
- ◆ Instruction and assessment based on the Standards of Learning (SOL)
- ◆ Remedial instruction
- ◆ Adult Basic Education (ABE)/General Education Development (GED) instruction
- ◆ IEP based instruction
- ◆ Social/affective education skills
- ◆ Career awareness
- ◆ Pre-vocational skills

- ◆ Life skills
- ◆ Transition assessment and services
- ◆ Other, as specified by the IEP

CONTINUATION OF SERVICES:

General. When a student enters a jail, staff must first determine whether the student has an IEP. When a student has an existing IEP, it is the responsibility of the school division in which the jail is located to ensure the continued implementation of the IEP. Modifications may be needed due to the nature of the jail. When a student is incarcerated in a jail outside the jurisdiction of his/her residence the two school divisions are encouraged to work together to best meet the needs of the student; for example, expediting the transfer of records, transferring of credits, discussing diploma options.

Termination of special education and related services can only occur when determined by an eligibility group after an evaluation of the student, or if the parent or adult student withdraws consent for special education services. Eligibility for services also terminates when the student graduates with a standard or advanced studies high school diploma or exceeds the age of eligibility (turns 22 before September 30 of the current school year). 8 VAC 20-81-10, 8 VAC 20-81-90 A. Earning a GED does not relieve a school division of FAPE responsibilities.

Students from the age of 18 through the age of eligibility remain eligible for special education and related services as a student with a disability if, in a previous educational placement prior to their incarceration in an adult correctional facility, they were identified as being a student with a disability. The obligation to make a free appropriate public education available to all students with disabilities does not apply to students from the age of 18 through the age of eligibility who, in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a student with a disability and did not have an IEP. This exception does not apply to students with disabilities from the age of 18 through 21 who have been identified as students with disabilities and have 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 students with disabilities. 8 VAC 20-81-100 A-2-b.

Screening. A teacher, specialist, or jail intake officer may screen a student for the purposes of determining whether the child may have previously received special education services or whether a student under the age of 18 is suspected to have a disability. This screening shall not be considered an evaluation for eligibility for special education and related services and therefore, does not require consent.

Although the screening process should not rely on self-reported data, a personal interview with youth when they are admitted to the facility can be a good source of information. Sample questions that are helpful in eliciting information about a prior history of special education include:

- ◆ What was the name of the last school you attended?
- ◆ How long ago did you last attend school?
- ◆ What was the last grade level you attended?
- ◆ About how many students were in your classes?
- ◆ What were favorite subjects? What subjects gave you the most trouble?
- ◆ Did you see a teacher to get extra help with those subjects, or with your behavior?
- ◆ Did you attend a special program, alternative school, or a special school?
- ◆ Were you ever enrolled in special education? Did you have an IEP?

All pertinent records should be obtained and reviewed, including education records from school divisions, evaluations by Community Service Boards (CSBs), and correctional facilities, etc. In obtaining and reviewing these records, the school division must provide procedural safeguards, including written notice, when appropriate; confidentiality; and maintenance of the student's education record,

STUDENTS SUSPECTED OF HAVING A DISABILITY:

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Student Find. Each school division shall maintain an active and continuing student find program designed to identify, locate, and evaluate those students residing in the jurisdiction who are under the age of 18, who are suspected of having a disability, who need special education and related services, and who are incarcerated in a local or regional jail in its jurisdiction for more than 10 days. 8 VAC 20-81-50 A. In those instances where students under the age of 18 in local and regional jails are suspected of having a disability, it is the responsibility of the school division staff to follow procedures for the determination of eligibility for special education services as required by 8 VAC 20-81-60 through 8 VAC 20-81-80. When a student is suspected of having a disability and the eligibility determination has not been completed prior to discharge, school division staff must refer the student to the receiving school division or educational agency. The educational evaluation data pertaining to the student must be forwarded with the referral. In all instances, procedural safeguards as required by law will be afforded to protect the rights of the parent and the student or the adult student.

Assessment Components. For students who need to be evaluated for determining initial or continued eligibility for special education, school division staff are encouraged to utilize current assessment data obtained from school divisions, hospitals, correctional facilities, social services agencies, Department of Behavioral Health and Developmental Services, and Community Service Boards, or other appropriate sources. If assessments need to be updated, the school division should use qualified staff. The school division may need to have contractual arrangements with qualified providers.

INDIVIDUALIZED EDUCATION PROGRAM:

All requirements regarding IEP development, review, and revision apply to students with disabilities in local or regional jails, including assessment requirements to graduate with a diploma. VAC 20-81-110 I.2. Best practice also suggests that a representative from a local or regional jail participates as a member of the IEP team.

SPECIAL SERVICE DELIVERY CONSIDERATIONS FOR STUDENTS WITH DISABILITIES IN LOCAL OR REGIONAL JAILS:

Some special considerations for students with disabilities being served in local or regional jails include the following:

- ◆ Due to security issues in local and regional jails, no single model for delivery of services on the continuum of placements is used. The IEP team may modify a student's IEP or placement if the jail staff demonstrates to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated. 8 VAC 20-81-110 I.3.a. If such modifications are made by the IEP team, the requirements related to least restrictive environment do not apply.
- ◆ Transition may need to be addressed; however, 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. 8 VAC 20-81-110 I.3.c..

STUDENTS WHO REQUIRE A REGULAR PROGRAM OF STUDIES:

General. Students incarcerated in local and regional jails requiring special education programs that were enrolled in general education programs in secondary school should be afforded similar or modified education opportunities while in jail. When initiating instruction for these students, modifications in the education program may be required because of the student's detainment. Procedural steps to ensure the continuity of a program of studies and services for students in regular academic instructional programs are as follows:

- ◆ Upon the student entering the jail, the school division administrator/designee will contact the student's guidance counselor, where appropriate, to request information on the student's curriculum program. Information regarding textbooks, special projects, grade level placements, special tests, exams, etc., should be obtained and reviewed.
- ◆ Modifications in the student's regular course of study may occur as a result of a multidisciplinary approach. Modifications in the student's curriculum will be conveyed to a properly comprised IEP team.
- ◆ Instructional objectives will be developed for each student in a regular program of studies based on the Virginia Standards of Learning curriculum. Students will

participate in the Commonwealth's statewide assessment program if they are enrolled in a class with an end-of-course assessment during the testing window and have not yet passed that particular assessment.

High School Credit. Credit may be awarded to a student upon successful completion of an individually designed course consistent with the IEP in which 140 clock hours of instruction have been provided. An alternative method for granting credit is available at the discretion of school division officials and may be better suited to the needs of the student. 8 VAC 20-131-110 The following conditions must be met under this alternative:

- ◆ Ensure that the scope of each course for which credit is awarded under this provision is comparable to the scope of a corresponding course meeting the standard of 140 clock hours of instruction;
- ◆ Develop a set of performance objectives for a well-defined course of study which will clearly indicate that, upon completion, the student has met the aims and objectives of the course as evidenced through the mastery of certain predetermined objectives and requirements associated with the course;
- ◆ Develop procedures for evaluating the progress of students in this program. Such procedures could include criterion-referenced tests and/or standardized tests;
- ◆ Develop a written policy covering this program and have approval from the student's school division, and
- ◆ The school division's superintendent is responsible for granting credit.

The term "instruction" shall be interpreted to include independent study when such study is limited to those students who have demonstrated the maturity and ability requisite for this type of learning experience, and when the supervising teacher provides for appropriate direction, a means of accountability, and student evaluation.

Maintenance of Student Records. Each school division must ensure that education records of students with disabilities are properly maintained in accordance with the Virginia Code, the Family Education Rights and Privacy Act, the Virginia Regulations, and the Records Retention and Disposition Schedule of the Library of Virginia. 8 VAC 20-81-170 G.

Request for School Records. Whenever a division superintendent or designee is notified by a school division employee responsible for education programs in a local jail that a pupil who last attended a school within the school division is a pupil in an educational program in a local jail, the school division superintendent or designee shall transfer the scholastic records of such pupil to the local jail within five business days. Code of Virginia § 22.1-289.

Release from Jail. The following considerations apply when a student is being released from jail:

- ◆ The decision to release a student from a jail is determined by the courts. When possible, student progress will be reviewed by the school division administrator prior to discharge.
- ◆ Copies of pertinent educational records, including progress reports, IEPs, eligibility determination, and academic records must be sent to the receiving education agency.
- ◆ If a student is released before assessment procedures are complete or during the eligibility process, all educational records shall be forwarded and an appropriate referral shall be made to the receiving education agency.

STUDENT REPORTING REQUIREMENTS:

STUDENT RECORDS COLLECTION – FALL, SPRING, END-OF-YEAR, DECEMBER 1

Each student receiving special education services in a local or regional jail is reported in the Student Records Collection count of the school division in which the jail is located. That division is the responsible division and the serving division. Placement Code 8* and School Code 9997 identify the student as being incarcerated in a local or regional jail. An example is listed in the following scenario.

This student was a resident of Fauquier County (030) prior to incarceration, but has been in the Loudoun jail since 9/10/11. Loudoun County (053) is responsible for the educational program in the jail. Loudoun submits the student.

State Testing ID#	Responsible Division	Responsible School	Serving Division	Serving School	Placement Code*
1012225678	053	9997	053	9997	8

** December 1 collection only*

PERSONNEL ISSUES:

Personnel Policies. All personnel employed by a school division and assigned to the jail are responsible for adhering to all rules, regulations, and statutes pertaining to jail policies and to those of the school division.

Certification/Endorsement. 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. 8 VAC 20-81-40 C. Additional education personnel, such as occupational therapists, physical therapists, and interpreters for the deaf, hired to provide required related services, must also hold valid professional licenses, certificates, and endorsements. Virginia Licensure Regulations for School Personnel, 8 VAC 20-22.

Length of Contract. Special education jail teachers adhere to the length of the contract (i.e., 10, 11, or 12 month) established by the school division as identified in the interagency agreement between the school division and jail. Instructional programming must be available 12 months per year if required by an IEP. Note that in the event a local jail has a 10 or 11 month educational program, the school division is not relieved of its student find responsibilities for inmates under the age of 18, as well as its responsibility to ensure that eligible inmates, including students from the age of 18 through the age of eligibility are located and have an IEP prior to the start of the regular school year.

Professional Development/Travel. Special education teachers assigned to the local or regional jail are encouraged to participate in workshops or professional development offered by the VDOE, the school division, and the jail. Reimbursement for all travel follows local policy.

Universal Precautions. Infectious disease control poses special concerns for personnel in local and regional jails. It is necessary that prudent precautions be taken for protection against transmission of infectious diseases. If the jail educator has an exposure to blood or bodily fluids the staff member shall immediately follow protocol outlined by the jail.

Performance Review. According to the Standards of Quality and Objectives for Public Schools in Virginia, Code of Virginia, § 22.1-253.13, effective July 1, 2010, each school division is required to establish and maintain a cooperatively developed procedure for the evaluation of the performance of each employee. Since the special education staff assigned to the jail are employed through the school division, evaluation of education personnel will be according to the policies and procedures of the school division.

ADDITIONAL RESOURCES

- ◆ Request For Student Records (Sample form)
- ◆ Educational Services Non-Participation Form (over 18) (Sample form)
- ◆ Setting up a Special Education Program in a Local or Regional Jail (Sample Checklist)

These sample forms can be downloaded in Word from the VDOE Web site at www.doe.virginia.gov/special_ed/iep_instruct_svcs/jail_program/index.shtml

REQUEST FOR STUDENT RECORDS

(Sample)

To Whom It May Concern: Please mail a signed official transcript, test scores (including SOL scores), and health records on this student to the address listed below within five business days*:

Name: _____ **DOB:** _____

Student ID Number: _____ **Grade:** _____

Special Education: ___ Yes ___ No **DISABILITY:** _____

If the student was receiving special education services, please release the following additional information:

- ◆ Psychiatric Evaluation
- ◆ Psychological Evaluation
- ◆ Educational Assessment
- ◆ Sociological Evaluation
- ◆ Medical Examination
- ◆ Date of last eligibility and summary of meeting
- ◆ Latest IEP

Any additional information that might aid our professional staff in assisting this student to adjust to his/her new environment will be most helpful.

*Code of Virginia § 22.1-289 E. stipulates that the school division superintendent (or designee) shall transfer the scholastic records of such pupil to the local jail within five business days of such request.

School information sent by:

Name: _____

Phone: _____ **Fax:** _____

Please send to: **FAX** (Place your fax number here) or
 MAIL (Place your address here)

EDUCATIONAL SERVICES NON-PARTICIPATION FORM (OVER 18) (SAMPLE)

Non-participation in Special Education and Related Services

I _____(name)_____ am _____ years of age. I understand that all rights afforded to the parent or parents under the Individuals with Disabilities Education Act (20 USC, Section 1400 et seq.) transfer to the student upon the age of majority (age 18).

- I understand that I am eligible to receive special education and related services (8 VAC 20-81-100 A 1).
- I understand that I have a right to a free appropriate public education until my 22nd birthday (8 VAC 20-81-100 A 1).
- I choose not to participate in the K-12 education programs including special education and related services.
- I understand that at any time during my stay at __ (name of jail facility) __, I can choose to participate in and receive special education and related services.

Student Signature

Date

Jail Education Coordinator/Designee

Date

SETTING UP A SPECIAL EDUCATION PROGRAM IN A LOCAL OR REGIONAL JAIL

(Sample Checklist)

Establish contact with the jail

- ◆ Visit the sheriff/regional jail superintendent
- ◆ Tour the jail

Identify the potential size of the population to be served

- ◆ Identify the number of inmates aged 18-22 who are in jail for over 10 days
- ◆ Identify the number of inmates under age 18 who are in jail for over 10 days
- ◆ Estimate the number of inmates who will need to be interviewed to identify potential eligibility for special education services
- ◆ Estimate the number of inmates who would receive special education services

Initiate a relationship between the local school division and the local or regional jail

- ◆ Identify contact people within the jail and school division
- ◆ Establish a communication process
- ◆ Identify training needs for jail and education staff. Begin discussion of interagency agreement between school and jail

Establish procedure to identify inmates who may need education services. This information will trigger an interview by education personnel

- ◆ Determine information needed to identify inmates who may need services
- ◆ Review existing intake process
 - What modifications can be made?
 - Will additional information be needed?
 - Who will gather the information?
- ◆ Establish process for gathering information and forwarding to educational staff

Identify location of space for education and time available for education services

- ◆ Identify local jail policy regarding separation of inmates by gender or by age (e.g., multiple locations)
- ◆ Identify time of day inmates are most likely to be available for services
 - Mandatory programs
 - Predictable interruptions (e.g., lockdowns)

- ◆ Identify if space allows for small group instruction or one-to-one instruction
- ◆ Identify if space allows for use of instructional equipment (e.g., computers, AV equip., etc.)

Review jail security procedures and issues with sheriff

- ◆ Identify security training requirements
- ◆ Identify security associated with hiring/assigning personnel (e.g., background checks)
- ◆ Identify security requirements associated with educational equipment and materials
- ◆ Identify if/how inmates will be transported to the education program

Identify education staffing requirements

- ◆ Determine if the jail education coordinator position will be full-time, part-time, or hourly, based on the projected population
- ◆ Determine if the teacher position(s) will be full-time, part-time, or hourly, based on the projected population (If less than FT, can the jail education coordinator assume all instructional responsibilities?)
- ◆ Identify school division resources
- ◆ Identify supervisory responsibilities for staff, delineating the role of the school division and of the sheriff
- ◆ Hire or assign staff and begin the process of completing background checks, if required

Identify Budget

- ◆ Project budget for inmate identification and provision of services
- ◆ Establish mechanism for gathering demographic information for the quarterly report to the state and the December 1 Count
- ◆ Develop budget for purchases of equipment and materials

Training of education and jail staff

- ◆ Arrange training for educators in jail security
- ◆ Conduct training needs assessment and arrange for completion of necessary training

Arrangement for records management

- ◆ Establish procedures to ensure confidentiality of education records is maintained according to the requirements of both the school division and the jail

Identify instructional model and methods to be used

- ◆ Determine if the instructional program will involve the following and plan for implementation:
 - Academic skills
 - Social skills
 - Vocational/Pre-vocational skills
 - Computer aided instruction
- ◆ Identify linkages with adult education and other jail programs
- ◆ Purchase or gather instructional materials and equipment (review list with jail staff to determine that all materials and equipment are in accordance with jail security requirements)

Determine methods to streamline application of the special education process

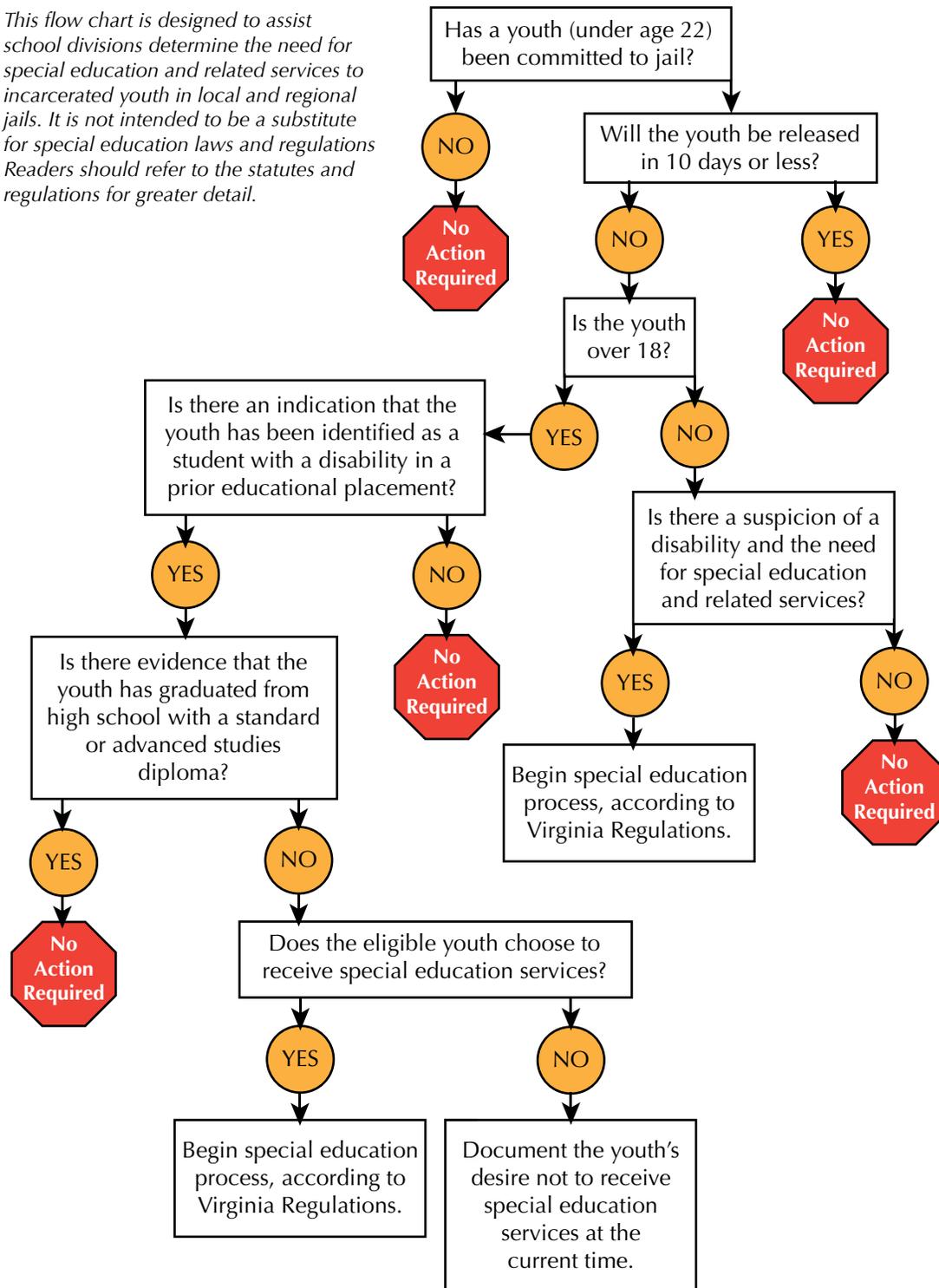
- ◆ Identify assessment components that may be in the inmate's non-educational records at the jail (e.g., medical, psychological)
- ◆ Identify process to move quickly from eligibility determination to IEP development and implementation

Transition planning

- ◆ Meet with jail staff to identify where inmates will go upon release or transfer from the jail
- ◆ Identify linkages that need to be made at those locations

PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES IN VIRGINIA JAILS

This flow chart is designed to assist school divisions determine the need for special education and related services to incarcerated youth in local and regional jails. It is not intended to be a substitute for special education laws and regulations. Readers should refer to the statutes and regulations for greater detail.



NOTES

NOTES



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