

**VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES**

**GUIDANCE DOCUMENT
ON THE
IMPLEMENTATION OF
IDEA 2004 – PART B REQUIREMENTS**

May 2005

The Individuals with Disabilities Education Improvement Act 2004, P. L. 108-446, was signed into law on December 3, 2004 by President George W. Bush. The provisions of this Act [hereinafter IDEA '04] will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect on December 3, 2004.

This Guidance Document serves as a summary of the major provisions that create new requirements, as well as alter a number of current federal and state regulations governing special education. In consultation with the Office of the Attorney General, the Virginia Department of Education reaffirms that the Act’s provisions supercede current state special education regulations when there is an impact on the regulation.¹ Any federal and state special education regulation not impacted by the Act remains in effect until newly revised federal and/or state special education regulations are implemented.

The Office of Special Education and Rehabilitative Services in the U.S. Department of Education is working on the revisions of the federal regulations governing special education. They anticipate issuing draft regulations later this month for public comment.

Questions related to this Guidance Document should be directed to:
H. Douglas Cox, 804-225-3252; Doug.Cox@doe.virginia.gov
Judy Douglas, 804-225-2771; Judy.Douglas@doe.virginia.gov; or

¹ Supts Memo, #7, Informational, January 14, 2005

GUIDANCE DOCUMENT

TABLE OF CONTENTS

FOUNDATION FOR THE IDEA 2004	1
PREFATORY NOTES	3
I. DEFINITIONS.....	4
II. HIGHLY QUALIFIED TEACHER	5
III. RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS	6
IV. OVERIDENTIFICATION AND DISPROPORTIONALITY	6
V. EVALUATION - ELIGIBILITY.....	6
VI. INDIVIDUALIZED EDUCATION PROGRAM (IEP).....	11
VII. SECONDARY TRANSITION	15
VIII. CONSENT	16
IX. PROCEDURAL SAFEGUARDS.....	17
X. DISCIPLINE.....	18
XI. PRIVATE SCHOOLS	21
XII. SURROGATES	22
XIII. MEDIATION	23
XIV. DUE PROCESS	24
(ATTACHMENT I).....	29
(ATTACHMENT II).....	31

GUIDANCE DOCUMENT
Major Changes in the IDEA 2004
Part B Requirements

May 2005

FOUNDATION FOR THE IDEA 2004

A. Purposes [Section 1482 (d)]

1. To ensure that children with disabilities have a Free Appropriate Public Education (FAPE) available to meet their unique needs and prepare them for further education, employment, and independent living.
2. To ensure that the rights of children with disabilities and their parents are protected.
3. To assist states, localities, educational service agencies and Federal agencies in providing for the education of all children with disabilities.
4. To assist states in the implementation of a statewide, comprehensive, coordinated, multi-disciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.
5. To ensure that educators and parents have the necessary tools to improve educational results for children with disabilities.
6. To assess and ensure the effectiveness of efforts to educate children with disabilities.

B. Aims [Section 1482 (c)(5) – (13); related to Congress' findings]

1. To improve educational results for students with disabilities.
2. To ensure that states align their accountability systems for students with disabilities to NCLB accountability and require IEPs to specifically address academic achievement.
3. To support early intervention by giving school divisions flexibility to use up to 15 percent of their funds for early intervening services for students before they are identified as needing special education.
4. To require school divisions with significant over-identification of minority students to operate early intervening programs.

5. To reduce paperwork; focus resources on teaching and learning.
6. To establish a six-year path to reach the 40 percent funding goal. Further, to allow schools to redirect a share of their own local resources for educational purposes, consistent with activities in NCLB.
7. To strengthen the role and responsibility of parents and ensure that families of students with disabilities have meaningful opportunities to participate in the education of their children at school and at home.
8. To support high-quality, intensive pre-service preparation and professional development for all personnel who work with students with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of students with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible.
9. To provide incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services.
10. To support the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for students with disabilities.

PREFATORY NOTES

- The following sections list the major changes of the IDEA 2004 that impact Virginia's *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. [hereinafter Virginia Regulations] The sections do not include a review of the requirements related to VDOE's eligibility requirements or of all the funding, data, and reporting requirements under Sections 612, 613, and 618.
- Throughout the document the citation for the Virginia Regulations will be identified as 8 VAC followed by the actual cite.
- Bolded words or phrases indicate the specific IDEA '04 language incorporated into an existing mandate, or for specific emphasis.
- **All other Virginia Regulations not impacted by the IDEA 2004 changes remain in effect.**
- The Virginia Department of Education is hereinafter referenced as VDOE.
- "Day" means calendar day, unless otherwise specified.
- When the IDEA '04 was signed into law, the Act's provisions were referenced by the 600 numbering series, such as, Section 615 Procedural Safeguards. When the Act then became incorporated into the U.S. Code, Title 20, the number for the IDEA '04 provisions changed to the 1400 series, so that the Procedural Safeguards section is now listed as Section 1415. VDOE's initial training on the new IDEA provisions used the then existing 600 numbering series. The following pages contain the 1400 series, to be consistent with the U.S. Code numbering series.

I. DEFINITIONS

Assistive Technology Device

8 VAC 20-80-10 IDEA '04 1401 (1)(B); (26)(B)

REVISES the mandate to add an exception. The revised definition excludes a medical device that is surgically implanted or the replacement of such a device. Such devices are also excluded from the definition of related services.

Core Academic Subjects

NEW IDEA '04 1401 (4)

Means reading/language arts, math, science, foreign languages, civics/government, economics, arts, history, and geography. This is the same meaning as contained in the Elementary and Secondary Education Act (ESEA) 1965, as amended; No Child Left Behind Act of 2001 (NCLB).

Developmental Delay

8 VAC 20-80-10 IDEA '04 1401 (3)(B)

REVISES the mandate to permit the age range for classifying children as developmentally delayed to be reduced to ages 3-5, or any subset of the age range 3 through 9. Virginia Regulations currently provide FAPE for children beginning with the age 2 and the subset age range for Developmental Delay is 2 through 8. Virginia Regulations at 8 VAC 20-80-52 regarding eligibility requirements for this category remain in effect.

Highly Qualified

NEW IDEA '04 1401 (10)(A), (B), (C), (D)

For any special education teacher, the term “highly qualified” has the meaning given the term in NCLB Act of 2001, P.L. 107-110, Title IX, General Provisions, §9101, “Definitions”, #23.

Homeless Children

NEW IDEA '04 1401 (11)

This term has the same meaning as “homeless children and youths” in Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434 a).

Link: <http://www.naehcy.org/mvact.doc>

Parent

8 VAC 20-80-10 IDEA '04 1401 (23)

ADDS to the statute, language from the current federal definition and mirrors the Virginia Regulation, as including natural, adoptive or foster parent unless state law prohibits the foster parent. Parent does not include the state.

Transition Services

8 VAC 20-80-10 IDEA '04 1401 (34)

REVISES the mandate. The bolded section notes the new language:
Transition services include:

- coordinated set of activities for a child with a disability;
- that is designed to be within a **results**-oriented process; [Virginia Regulations use the word “outcome”]
- **that 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.

Universal Design

NEW IDEA '04 1401 (35)

The term has the meaning given it in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002). “...a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities....”

Ward of the State

NEW IDEA '04 1401 (36)

Applies to foster children or wards of the state or children in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of parent.

II. HIGHLY QUALIFIED TEACHER

8 VAC 20-80-45 A IDEA '04 1412 (a)(14)(C) and (E)

REVISES requirements for personnel to align with NCLB requirements.

Please refer to [Attachment I](#), “Virginia Requirements to Be a Highly Qualified Special Education Teacher” and [Attachment II](#), “Virginia Requirements for Teachers Not New to the Teaching Professions to Meet the Definition of Highly Qualified in the Federal Core Academic Areas and Special Education”.

These documents represent the Virginia Board of Education’s alignment of the Board’s “Highly Qualified” policies to requirements for special education teachers under the IDEA '04. The VDOE is currently developing a Q & A document on this topic.

Additional Guidance: [Supts. Memo, #53, March 4, 2005, Informational](#)

III. RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS

8 VAC 20-80-10 IDEA '04 1412 (a)(14)(B)

REVISES requirements.

- Related services personnel and paraprofessionals must meet qualifications consistent with the state's licensing requirements, but not on an emergency, temporary or provisional basis.
- Paraprofessionals and assistants must be appropriately trained and supervised in accordance with state law, regulation or written policy when they assist in the provision of special education and related services.

Guidance: VDOE's, "Implementing the *NCLB Act 2001*", Q & A

IV. OVERIDENTIFICATION AND DISPROPORTIONALITY

NEW IDEA '04 1412 (a)(24)

States must have in effect policies and procedures designed to prevent inappropriate overidentification or disproportionate representation by race or ethnicity of children with disabilities, including particular disability categories.

V. EVALUATION - ELIGIBILITY

A. In General

Determining Eligibility Factors
--

8 VAC 20-80-56 C.3 IDEA '04 1414 (b)(5)(A)
--

REVISES the mandate relative to when a student is not eligible for special education services. The mandate requires that the student is not eligible if it is found that the determinant factor in the learning problems is the lack of appropriate instruction in reading including essential components of reading instruction.

NOTE: "Essential components of reading instruction" is not defined in IDEA '04, but is referenced in NCLB as including:

- phonemic awareness;
- phonics;
- vocabulary development;
- reading fluency, including oral reading skills; and,
- reading comprehension strategies.

FAPE

8 VAC 20-80-30 IDEA '04 1412 (a)(1)(C)

REVISES FAPE requirements. States are not required to provide FAPE to children who are eligible for Part B but are receiving Part C services.

Conduct of the Evaluation

8 VAC 20-80-54 E. 3 IDEA '04 1414 (b)(2)(A) & (B)

REVISES requirement to specify that the evaluation process gather **academic** information about the child and not use any single measure or **assessment** as the sole criterion for determining whether the child is a child with a disability.

B. Other Provisions

Early Intervening Services

NEW IDEA '04 1413 (f)

NEW. Allows school divisions to use not more than 15 percent of the amount they receive under Part B funds for any fiscal year in combination with other amounts, to develop and implement coordinated early intervening services. This may include interagency financing structures, for students in K-12 with a particular emphasis on students in K-3 who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in the general curriculum.

The law further states that for a student receiving early intervening services, there is no limit or entitlement to FAPE simply because the student is receiving these services. In order to implement the mandate, the law further states that school divisions may include professional development, which may be provided by entities other than the LEAs, for teachers and other staff. Such professional development activities can enable such personnel to deliver scientifically based literacy instruction and where appropriate, instruction on the use of adaptive and instructional software.

NOTE: Another new requirement in the IDEA '04 mandates that **a school division identified as significantly disproportionate must reserve the maximum amount of funds under Section 1413 (f), that is, the 15 percent amount, on early intervening services**, particularly the group overidentified. [Section 1418 (d)(1)(B)]

Elements to be Evaluated

8 VAC 20-80-54 D.1.b & F.2.b IDEA '04 1414 (c)(1)(B)(i) & (ii)

ADDS language that requires the team determining what evaluation data need to be obtained, to review **local and state** assessments; **classroom**-based observations; the **academic achievement and related developmental needs** of the child; and in part, determine in addition to the other considerations, what, if any, data is needed to determine **the educational needs of the child**.

Initial Evaluations

8 VAC 20-80-54 H.1 IDEA '04 1414 (a)(1)(C); (b)(3)(D)

ADDS language wherein either a parent, SEA [VDOE], or other State agency or school division can request an initial evaluation.

ESTABLISHES a federal timeline of 60-days for completion of evaluations from the point of parental consent. However, the mandate defers to the state if it has a timeline within which the evaluation must be conducted. Consistent then with Virginia Regulations and the deference the federal law gives to the state's timeline, and following its review of this issue with the Office of the Attorney General, the **VDOE is applying its 65 business days of the receipt of the referral by the special education administrator or designee for completion of evaluations and eligibility determination. The following exceptions to the timeline as stated in the IDEA '04 apply:**

First exception:

- If a student enrolls in a school division after the timeframe has started and prior to eligibility determination by the previous school division. However, this exception does not apply if the subsequent school division "is making sufficient progress to ensure a prompt compliance of the evaluation", and the parent and subsequent school division agree to a specific timeframe when the evaluation will be completed.

Second exception:

- If the parent repeatedly fails or refuses to produce the student for the evaluation.
-

Reevaluation

8 VAC 20-80-54 F.1 IDEA '04 1414 (a)(2)

8 VAC 20-80-54 F.5 IDEA '04 1414 (c)(4)(ii)

REVISES the mandate to provide that reevaluations occur if the school division determines that the educational and related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation or if the child's parents or teacher request one. The law also limits reevaluations to not more than once a year, unless the parents

and school division agree otherwise and at least once every 3 years, unless parents and school division agree otherwise.

NOTE: If the school division refuses to conduct a reevaluation because it has already done one within the year, the school division needs to document this refusal through written prior notice. The requirements for written prior notice have not changed.

REVISES the mandate which is similar to the federal and Virginia Regulations. If the IEP team determines that no additional data are needed to decide whether the child continues to be a child with a disability and to determine the child's educational needs, the notification to the parent must include the parent's right to receive an evaluation about the child's educational needs, in addition to whether the child continues to be a child with a disability.

Native Language

8 VAC 20-80-54 E.1.b IDEA '04 1414 (b)(3)(A)(ii); (iv) and (v)

REVISES the mandate to provide that evaluations be done in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer.

REVISES the mandate also to clarify that the administration of assessments and other evaluation materials be conducted by trained personnel in accordance with applicable instructions by assessment producers to all assessment procedures. **Additionally, the provision requires coordination of the administration of assessments between school divisions if a child moves from one division to another in the same academic year.**

Screening

NEW IDEA '04 1414 (a)(1)(E)

NEW. A teacher or specialist may screen a student for the purposes of determining appropriate instructional strategies for curriculum implementation. This screening shall not be considered an evaluation for eligibility for special education and related services.

NOTE: The term "screening" in this instance is not the same as found in the regulations relative to Child Find. The term "screening", in this instance, is more in keeping with pre-referral interventions. Used in this context, this type of screening is not part of the evaluation for eligibility process and therefore, does not require parental consent. The information obtained from this "screening" may not be considered an evaluation for eligibility later on, but it may be used later during the evaluation-eligibility determination as part of reviewing the student's educational record. Additionally, this new provision does not change the Screening requirements as found in Virginia Regulations related to Child Find.

Prohibition – Mandatory Medication

NEW IDEA '04 1412 (a)(25)

NEW. States and school divisions are prohibited from requiring a child to obtain a prescription of a controlled substance as a condition of attending school, receiving an evaluation, or receiving services under the IDEA. This prohibition does not prevent teachers and other school personnel from sharing with parents their observations of the student's performance or behavior in the classroom or school, or their supporting the need for an evaluation for special education and related services.

Specific Learning Disabilities

8 VAC 20-80-56 G IDEA '04 1414 (b)(6)

REVISES the mandate whereby the state may not require school divisions to consider whether a child has a severe discrepancy between achievement and intellectual ability when determining whether a child has a learning disability. School divisions are permitted to use a response to a research-based intervention as a part of an evaluation process. In other words, school divisions may choose to use the discrepancy model and/or research-based intervention model or different research based assessment process. The state is simply not permitted to require school divisions to use the discrepancy model.

NOTE: "Research based intervention model" is defined in the NCLB, but not defined in the IDEA. [see NCLB 2001, Title IX, General Provisions, Section 9101, "Definitions", #37, Scientifically Based Research] The U.S. Department of Education's Office of Special Education Programs is expected to issue a technical assistance document on this subject.

Termination of Eligibility

8 VAC 20-80-58 A IDEA '04 1414 (c)(5)(B)(1)

REVISES the law to incorporate a provision already in the current federal and Virginia Regulations which states that an evaluation is required before determining if the child does not have a disability unless the change in eligibility is due to:

- graduating with a regular* diploma; or,
- reaching maximum age for eligibility.

*NOTE to clarify the terminology: The federal language is "regular" diploma. Virginia Regulations specify "graduation with a **standard or advanced studies high school diploma...**".

VI. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

A. Content

General

8 VAC 20-80-62 IDEA '04 1414 (d)(3)(A)(iv)

ADDS that the IEP team consider the **academic, developmental, and functional needs of the child** when developing or revising the child's IEP.

Present Level of Performance

8 VAC 20-80-62 F.1 IDEA '04 1414 (d)(1)(A)(i)(I); and (aa)

REVISES the mandate to require that IEPs include a statement of present levels of **academic achievement and functional performance**. Changes the term "general curriculum" to "general education curriculum".

Goals

8 VAC 20-80-62 F.2 IDEA '04 1414 (d)(1)(A)(i)(II)

REVISES the mandate to require that IEPs include a statement of measurable annual goals, including both **academic and functional goals**.

Benchmarks and Objectives

8 VAC 20-80-62 F.2 IDEA '04 1414 (d)(1)(A)(i)(I) & (II)

REVISES the mandate to require benchmarks or short-term objectives for only children with disabilities taking alternate assessments aligned to alternate achievement standards.

NOTE: Although the mandate applies to children with disabilities taking alternate assessments, it is permissible to include benchmarks or short-term objectives for other children with disabilities.

Progress Reports

8 VAC 20-80-62 F.7 IDEA '04 1414 (d)(1)(A)(i)(III)

REVISES the mandate to require that IEPs include a statement of how the child's progress toward annual goals will be measured and when periodic reports on progress will be provided (such as quarterly or other periodic reports concurrent with regular report cards). The IDEA '97 and implementing regulations refer to periodic reports at least as often as other parents are informed of progress.

NOTE: The IEP needs to define clearly how the parent may expect the child's progress to be reported toward achievement of the measurable annual goals. This becomes critically important if the child's IEP does not contain benchmarks and objectives to help the parent understand how the child's progress will be measured.

Essential Components

8 VAC 20-80-62 E.5 IDEA '04 1414 (d)(1)(A)(ii)

NEW. This provision incorporates into the statute a requirement in the federal regulations and subsequently the Virginia Regulations. It states that nothing be construed to require that IEPs include more than what is explicitly provided for in the new law, and that an IEP team need not include information under a component of an IEP that is already included elsewhere in the IEP. In other words, an IEP provision does not have to be restated in another section of the child's IEP.

Statement of Services

8 VAC 20-80-62 F IDEA '04 1414 (d)(1)(A)(i)(IV)

REVISES the regulation to provide that the IEP statement of special education and related services and supplementary aids and services be **based on peer-reviewed research to the extent practicable**.

NOTE: IDEA '04 does not define "peer-reviewed research". It is described in NCLB 2001. (*see* Title IX, General Provisions, Section 9101, "Definitions", #37, Scientifically Based Research") Additionally, the law does not clarify the intent of "to the extent practicable". It appears that the peer-reviewed research would provide the educational rationale for the identification of appropriate services and aids.

Accommodations/Assessments

8 VAC 20-80-62 F.5 IDEA '04 1414 (d)(1)(A)(i)(VI)

REVISES the mandate to require the IEP to include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments. If the IEP team determines that the child shall take an alternate assessment, there needs to be a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.

B. Meetings

Revising the IEP

8 VAC 20-80-62 B.4; C.1; E.4 IDEA '04 1414 (d)(3)(D) and (F)

REVISES the mandates so that:

- The IEP may be amended after the annual IEP meeting without the necessity of calling a new IEP meeting, if the parents and the school division agree to such action.
- The amendment or modification to the IEP must be in writing. The IEP can be amended, rather than completely redrafted, unless the parent requests a revised copy with the amendments incorporated.

NOTE:

- Document the agreement and that the amendment did not necessitate an IEP meeting.
- If any team member contemplates significant changes, it is better to hold an IEP meeting with the full team.
- The action of amending the IEP should not change the annual IEP meeting date. New federal regulations and/or guidance may address this matter.
- Written prior notice is still required when the IEP is amended, prior to implementing the change.
- During the discussion with the parent to amend the IEP without an IEP team meeting, the person(s) participating in the discussion with the parent must still represent the school division who can commit the school division's resources.

Team Membership		
8 VAC 20-80-62 C.1 [when not necessary]	IDEA '04	1414 (d)(1)(C)(i) IDEA '04 1414 (d)(1)(B)(ii) and (iii)
8 VAC 20-80-56 K.1; 2 [transfer students]	IDEA '04	1414 (d)(1)(C)
NEW		
excusal		1414 (d)(1)(C)(ii)
alternate means		1414 (f)
Part C		1414 (d)(1)(D)
consolidation of meetings		1414 (d)(3)(E)

REVISES the mandate regarding team composition with a slight change in wording. The mandate requires that the IEP team include **not less than 1** regular education teacher and **not less than 1** special education teacher. Currently, the law refers to “at least one” in both places.

NEW. Parents and school division may jointly excuse an IEP team member from attending the IEP team meeting:

- because the area of the curriculum or related services is not being modified or discussed. The agreement to excuse an IEP team member must be in writing and include parent consent.
- a member may be excused even if their curriculum or service area is being discussed by the written agreement of the parent and the school division. The IEP team member shall submit their input to the team in writing.

NOTE: This type of written input from the excused member is only necessary when it is anticipated that there will be discussion regarding the modification of the member’s curriculum or service area.

NOTE: The agreement to excuse a member must be in writing and with parent consent. The law is silent regarding when to obtain the parent’s consent. However, applying a standard of reasonableness would suggest that such consent may be obtained either prior to or at the IEP meeting. Remember that this agreement is not the same thing as notice of the IEP meeting, although documentation of the agreement could be inserted in the IEP meeting notice with a signature line added for the parent’s consent.

NEW. At the request of the parent, the school division must invite the Part C coordinator or other representative of the Part C program to the IEP meeting for a child transitioning from Part C to Part B services.

NEW. School divisions should encourage the consolidation of reevaluation meetings and IEP meetings.

NEW. The IEP meeting may be held by using alternate means such as videoconference or conference call if the parent and school division agree.

REVISES the mandate relative to transfer students:

- If a student on an IEP transfers from one school division to another in the same state within the same school year, the new school division shall provide comparable services, in consultation with the parents, until the new school division either adopts the previous IEP or develops a new one.
- If a student on an IEP transfers from one school division to another in a different state within the same school year, the new school division shall provide comparable services, in consultation with the parents, until the new school division conducts a new evaluation, if necessary, and develops a new IEP.

NEW: Requires that the new school divisions **take reasonable steps to promptly obtain the child's records** and the "old" school division take reasonable steps **to promptly respond** to those requests. [cross references to the requirements in 34 C.F.R. §99.31(a)(2), Family Educational Rights and Privacy Act]

VII. SECONDARY TRANSITION

Age Requirement

8 VAC 20-80-62 F.9	IDEA '04 1414 (d)(1)(A)(i)(VIII)
--------------------	----------------------------------

REVISES the mandate to say that transition services must be addressed in the IEP of the student in the year in which the student turns 16 years of age.

NOTE: Although the new IDEA deletes the age 14 provisions, the IEP team does not have to wait until the student's approaching 16th birthday year to consider the student's transition needs.

IEP Content

8 VAC 20-80-62 F.10	IDEA '04 1414 (d)(1)(A)(i)(VIII)(aa) & (cc)
---------------------	---

REVISES the mandate to say that the IEP must include a statement of appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the student in reaching those goals.

The new statute contains a provision already in the federal and Virginia Regulations. The provision mandates that the IEP include a statement that the student has been informed of rights transferring at the age of majority at least one year before rights transfer.

NOTE: Recall that in Virginia, the age of majority is 18.

Summary of Performance

NEW IDEA '04 1414 (c)(5)(B)(ii)

NEW. Requires that prior to the student graduating or exceeding the age of eligibility, the school division must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting postsecondary goals.

VIII. CONSENT

For Services

8 VAC 20-80-70 E.1 IDEA '04 1414 (a)(1)(D)(i)(II)

NEW. This provision is new in the federal statute but not new in Virginia Regulations that contain additional parental consent requirements. This particular provision requires written parental consent to be obtained before a school division provides initial special education and related services.

Absence of Consent

8 VAC 20-80-70 E.1 IDEA '04 1414(a)(1)(D)(ii)(II) & (III)

REVISES the mandate regarding options for school divisions when parents do not provide written consent. The IDEA '04 is consistent with current federal law, and implementing federal and Virginia regulations, in permitting school divisions to use due process to seek authority to do an evaluation if parents refuse to consent for the evaluation or fail to respond to requests for consent for evaluation. The IDEA '04, however, provides that school divisions may not use due process to seek to provide services if parents have failed to provide consent for services. Further, if parents refuse consent for services, the school division will not be considered to have failed to provide FAPE to the child, and shall not be required to convene IEP meetings about the child.

NOTE:

- This provision in the new law is linked to the initial provision of services. Virginia Regulations contain additional consent provisions for the provision of services related to subsequent IEPs. **Virginia's additional consent provisions remain in effect.**
- The IDEA '04 is silent regarding school divisions overriding parental non-consent for the continuation of an IEP. It is unclear whether the IDEA '04 lawmakers intended the safeguard of parents' rights, to make education decisions for their children, to extend to IEPs other than the initial IEPs, when the state has additional parent consent requirements. In other words, does the non-override provision for initial IEPs also extend to subsequent IEPs? VDOE's position is that 8 VAC 20-80-76 B.2 remains in effect until such time federal regulations address the issue and/or Virginia Regulations are revised. The state regulation

permits school divisions the option of initiating a due process hearing to resolve consent disagreements regarding continuing IEPs.

- Even though school divisions may not use due process to override the parent’s failure to provide consent for initial services, mediation remains an option of trying to resolve any dispute regarding consent.

Wards of the State NEW IDEA '04 1414 (a)(1)(D)(iii)

NEW. Requires school divisions to make reasonable efforts to obtain informed consent from the parent prior to an initial evaluation if the child is a ward of the state and not living with the child’s parents. The school division is not required to obtain consent from the parent if the school division, despite reasonable efforts, cannot locate the child’s parents; the rights of the parents have been terminated under state law; or the rights of the parent to make educational decisions has been subrogated under state law and consent for the initial evaluation has been given by an individual appointed by the judge to represent the child.

NOTE: This mandate cross-references to the definition of “parent” as found in 20 U.S.C. 1401. See also previous definition of “parent” on p. 5 of this document.

IX. PROCEDURAL SAFEGUARDS WRITTEN PRIOR NOTICE

When to provide 8 VAC 20-80-70 D.1 IDEA '04 1415 (d)(a)(A); and (A)(i) through (iii); 615 (n)

REVISES the mandate so that school divisions are responsible for providing the procedural safeguards notice to parents **once a year**, unless:

- the student is initially referred;
- the parent requests an additional copy; or,
- a request for a due process hearing has been filed.

Content 8 VAC 20-80-70 D.2 IDEA '04 1415 (d)(2)(E)
--

ADDS the following to the contents of the notice:

- statute of limitations period to file requests for due process hearings;
- the availability of mediation;

- the opportunity to resolve the issues in the request for a due process hearing through the efforts of a resolution session; and,
- the time period for filing an appeal of the due process hearing decision with the Court.

NOTE: Refer to Section XIV in this document on Due Process for the defined time periods.

Posting on the Web

NEW IDEA '04 1415 (d)(1)(B)

NEW. The school division may place a current copy of the procedural safeguards on its Internet website.

NOTE: This particular provision supports the use of technology and web sites. However, school divisions are cautioned relative to relying on the web site to meet the mandate to provide parents a copy of the procedural safeguards once a year (as well as those other required times). Not everyone has a computer, or access to one or the Internet.

Written Prior Notice

NEW IDEA '04 1415 (n)

NEW. Parents can elect to receive notices through email, if the school division makes such an option available.

X. DISCIPLINE

General Standard

8 VAC 20-80-68 A IDEA '04 1415 (k)(1)(A)

REVISES the mandate to permit school personnel to consider **any unique circumstances on a case-by-case basis** when deciding to order a change in placement for a child violating a school conduct code.

NOTE: The new law has included a number of provisions already in the federal and Virginia Regulations; for example, that no later than the date of the decision to take disciplinary action, the school division shall notify the parents of the decision and of the procedural safeguards. [1415 (k)(1)(H)] Other provisions include those relative to the 10-day rule for short-term and long-term suspensions; provision of services; and, completion of the functional behavioral assessment and behavioral intervention plan.

Interim Alternative Educational Setting

8 VAC 20-80-68 C.2.b IDEA '04 1415 (k)(1)(G)(iii)
[causes]

8 VAC 20-80-68 C.2.b IDEA '04 1415 (k)(1)(G)
[timelines]

REVISES the mandate relative to causes triggering an Interim Alternative Educational Setting/ placement. The mandate regarding IAES removals for drugs or weapons has been expanded to include offenses wherein the student inflicts serious bodily injury upon another person at school or school event. "Serious bodily injury" means a bodily injury that involves a 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. [U.S.C. 1365 (g)]

REVISES the 45-**calendar** day removal to be a 45-**school** day removal.

Stay-put/Pendency

8 VAC 20-80-68 C.7 IDEA '04 1415 (k)(4)(A)

REVISES the mandate to clarify that during due process hearings to contest disciplinary actions, the student remains in the discipline setting pending the hearing officer's decision or the expiration of the removal time, whichever occurs first, unless the parent and school division agree otherwise.

Expedited Hearing Timelines

8 VAC 20-80-68 C.9; 20-80-76 M IDEA '04 1415 (k)(4)(B)

ADDS to the statute a timeline for processing expedited hearings. When a due process hearing is requested relative to disciplinary actions, the hearing has to be completed within expedited timelines. The new law requires that the hearing must occur within 20 school days of the request for the hearing. The hearing officer's decision must be rendered within 10 school days after the hearings.

NOTE: A timeline for expedited hearings is not in the current federal law and regulations but is in the Virginia Regulations. This new federal timeline revises the timeline in the Virginia Regulations. The new timeline adds approximately 10 more days to Virginia's timelines.

Manifestation Determination

8 VAC 20-80-68 B.5.b(2) IDEA '04 1415 (k)(1)(E)(i)(I) & (II)
[causation standard]

8 VAC 20-80-68 C.2.d IDEA '04 1415 (k)(1)(D)(ii)
[FBA/BIP]

REVISES the causation standard. A manifestation determination shall be made by the parent, school division and relevant IEP team members to decide if the behavior was caused by, or had a **direct or substantial relationship** to the disability, or was the **direct result** of the failure to implement the IEP.

ADDS a provision already in the federal and Virginia Regulations, requiring that if the behavior was a manifestation of the child's disability, the IEP team must conduct a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) for the child, or review an existing plan and modify it as necessary to address the behavior. The new law also clarifies, as in the current regulations, that if the behavior is a manifestation, the child is returned to the pre-discipline placement, unless the parent and school division agree otherwise.

Basis of Knowledge

8 VAC 20-80-68 C.8.b (2) and c IDEA '04 1415 (k)(5)(C)

REVISES the mandate to state that the protections of the IDEA, under 'basis of knowledge' requirements do not apply if:

- the parent has not allowed a previous evaluation of the student or has refused services; or,
- the student has been evaluated and determined ineligible for special education and related services.

ELIMINATES the indicator that the behavior or performance of the student demonstrates need for special education as triggering the 'basis of knowledge' requirements.

XI. PRIVATE SCHOOLS

Child Find

8 VAC 20-80-66 C.2	IDEA '04 1412 (a)(10)(A)(ii)
--------------------	------------------------------

8 VAC 20-80-66 D.3	IDEA '04 1412 (a)(10)(A)(i)
--------------------	-----------------------------

ADDS a reference to private schools located in the school division when calculating proportional share.

ADDS requirements to conduct a thorough and complete child find; use state and local funds to supplement and not supplant proportionate amount; and keep records on the number of children evaluated and the number found eligible.

Consultation

8 VAC 20-8066 D.4.b	IDEA '04 1412 (a)(10)(A)(iii)
---------------------	-------------------------------

NEW	IDEA '04 1412 (a)(10)(A)(iii)(V)
-----	----------------------------------

ADDS additional consultation requirements on: child find; determination of proportionate share; consultation process; and, how services will be delivered:

- the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- the determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities, including the determination of how the amount was calculated;
- the consultation process among the school division, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and,
- how, if the 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 school division shall provide to the private school officials a written

explanation of the reasons why the school division chose not to provide services directly or through a contract.

NEW provision requires school divisions to put in writing why the school division elected not to provide the services directly or through contract, if a private school representative and the school division disagree on determinations made during the consultation process.

REVISES the mandate to require school divisions to obtain written affirmation from private school representatives that timely and meaningful consultation occurred.

Equitable services
8 VAC 20-80-66 D.10 IDEA '04 1412 (a)(10)(A)(vi)(II)

ADDS requirement that services be “secular, neutral and nonideological”.

Complaints
8 VAC 20-80-66 D.8; D.4.b IDEA '04 1412 (a)(10)(A)(iii)(V)

REVISES the mandate to give private school representatives the right to file a complaint with the state [VDOE] about the school division not engaging in consultation that was meaningful and timely or that the school division did not give due consideration. This revision provides the private school official the option, if dissatisfied with the state’s response, to appeal to the Secretary of Education, U. S. Department of Education.

XII. SURROGATES

Appointment
8 VAC 20-80-80 B.4 IDEA '04 1415 (b)(2)(A)(i) & (ii)

NEW IDEA '04 1415 (b)(2)(B)

REVISES the appointment requirements. For a child who is a ward of the state, the judge overseeing the child’s care may appoint the surrogate parent, provided that the person meets the non-employee standard. [see below, “Qualifications”]

NEW provision requires that the state [VDOE] make reasonable efforts to ensure that the school division appoints a surrogate within 30 days after determination that the child needs a surrogate.

Homeless Youth
NEW IDEA '04 1415 (b)(2)(B)

For an unaccompanied homeless youth, the school division must appoint a surrogate. Section 745(6) of the McKinney-Vento Homeless Assistance Act states that the term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.

Qualifications

8 VAC 20-80-80 D.1.c IDEA '04 1415 (b)(2)(A)

REVISES the law to include a provision already in the Virginia Regulations; that the surrogate shall not be an employee of the SEA [VDOE], the school division, or any other agency that is involved in the education or care of the child.

XIII. MEDIATION

When to request

8 VAC 20-80-74 A IDEA '04 615 (e)(1)

REVISES the mandate to require that mediation be available to resolve any dispute, instead of focusing solely on when due process hearing requests are made.

NOTE: VDOE has been supportive of this practice ever since the initiation of VDOE's statewide special education mediation system. VDOE supports parents and school divisions requesting mediation services when issues arise rather than when only a due process hearing is requested.

Meeting regarding benefits of mediation

8 VAC 20-80-74 C IDEA '04 1415 (e)(2)(B)

ELIMINATES the option of requiring parents who do not choose mediation to meet with a disinterested party to discuss the benefits of mediation. REVISES the mandate wherein the state [VDOE] or school division may establish procedures to offer the option to the disinterested party to discuss the benefits of mediation. EXTENDS the authority of the state or the school division to invite the disinterested party, including the school, to meet with a disinterested party to explain the benefits of mediation.

Mediation Agreements

8 VAC 20-80-74 E.2 IDEA '04 1415 (e)(2)(F)
[enforceability]

8 VAC 20-80-74 E.3 IDEA '04 1415 (e)(2)(F)
[content]

ESTABLISHES new requirements in the law that mediation agreements:

- be in writing, signed by both parent and school division representative;
- include a clause that discussions during mediation remain confidential and are not to be used as evidence in subsequent due process hearings or court actions; and,

- be enforceable in any state court of competent jurisdiction or in federal district court.

NOTE: Other than this last provision regarding enforceability, the other requirements are found in the Virginia Regulations.

NOTE: Challenges regarding the enforceability of the agreement are done in state courts or federal district courts, and not by hearing officers in due process hearings, or complaints specialists through VDOE’s complaints resolution procedures.

XIV. DUE PROCESS

Statute of Limitations for filing requests	
NEW	IDEA '04 1415 (f)(1)(C) & (D)

ESTABLISHES a federal default 2-year time limit, from when the parent or school division knew or should have known of the alleged violation, to file the request for a due process hearing, unless the state has established an explicit timeline for requesting due process hearings under Part B.

NOTE: Currently, Virginia Regulations are silent regarding this limitation period; however, VDOE has been guided by applicable case law in the Fourth Circuit which sets the limitation period as 2-years.

ADDS the provision that the timeline does not apply to a parent if the parent was prevented from filing by specific misrepresentation by the school division that it had resolved the problem, or the school division withheld information that the parent had a right to under Part B of the IDEA.

ADDS the provision that clarifies that either the parents or the school division can request a due process hearing. This provision is already contained in Virginia Regulations.

Notice	
8 VAC 20-80-76 O.2	IDEA '04 1415 (c)(2)(A) – (E); (b)(7)(A) & (B); (f)(3)(B); (n)
8 VAC 20-80-76 C.1	
[identification of issues]	
8 VAC 20-80-76 C.2	IDEA '04 1415 (b)(7)(A)(ii)
[content of notice]	
NEW	IDEA '04 1415 (f)(3)(B)
NEW	IDEA '04 1415 (f)(2)(B)(i)
NEW	IDEA '04 1415 (n)

REVISES the mandates to require that either party requesting a due process hearing must file a written request (notice), **which specifies the issues and the relief sought**. Either party can file a claim with the hearing officer that such notice is insufficient. Additionally, the receiving party must file a response within 10 days addressing the issues raised.

NEW. If the school division has not provided prior written notice about the issue(s) in the due process request, the school division must provide the parent with such notice within 10 days of receipt of the request for due process.

NEW. **The party requesting a due process hearing cannot raise issues in a hearing that were not raised in the due process notice**, unless the other party agrees (at least 5 days before the hearing). The due process hearing timelines recommence upon the filing of an amended notice.

NEW. Parents can choose to receive notices through email if the school division makes such an option available.

REVISES the content of the notice to refer to available contact information for homeless children.

ADDS that the party or their attorney must file the notice before a party can have a due process hearing.

Resolution Session

NEW IDEA '04 1415 (f)(1)(B)(i) – (iv)

NEW Provisions:

- Prior to the due process hearing, and within 15 days of receipt of the hearing request, the school division must convene an IEP team with specific knowledge of the facts in the hearing request, to discuss and attempt to resolve the complaint.
- The meeting must include someone from the school division with decision-making authority on behalf of the school division and may not include a school division attorney unless the parent brings an attorney. The parties may agree to waive the meeting or agree to use mediation.
- If the school division has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the hearing request, the due process hearing may occur.
- If there is resolution, the parties execute a written, signed document that is enforceable in any state court of competent jurisdiction or in federal district court.
- A party can void a written agreement within 3 business days of the agreement's execution.

NOTE: Both with the new requirements for Notice and the Resolution Session, it is important to keep in mind that the state's timeline for the school division appointing a hearing officer remains

the same, as well as the appointment notice communications and other due process requirements. Both parties will need to keep the hearing officer apprised of the steps taken in the resolution session, or if it does not occur. As noted, if the resolution does not take place, or the school division does not provide resolution to the parent's satisfaction within 30 days of receipt of the hearing request, or the resolution agreement is voided, the 45-calendar day timeline for the hearing process is triggered.

NOTE: At any point, school personnel and parents may jointly request mediation to help them resolve outstanding issues. Mediators attend to the considerations which allow parties to arrive at agreements freely and in good faith and are highly successful in aiding people in successful negotiations. These practices would avoid a situation where an unassisted party would find it necessary to void an agreement.

Qualifications of Hearing Officers

8 VAC 20-80-76 K; J; IDEA '04 1415 (f)(3)(A)(i) – (iv)
--

REVISES the mandates to require that hearing officers possess knowledge and ability to:

- understand state and federal statutes and interpretations by the Courts; and,
- conduct hearings and to render and write appropriate decisions under standard legal practices.

The new requirement further states that the hearing officer cannot have personal or professional interests that conflict with the person's objectivity. This latter requirement is already in the Virginia Regulations.

Hearing Officer's Decision

8 VAC 20-80-76 D.4 a & b IDEA '04 1415 (f)(3)(E)
--

ADDS a requirement that:

- hearing decisions must be based on a determination of whether the child received FAPE; and,
- procedural inadequacies can result in a finding that FAPE was not provided only if those inadequacies:
 1. impeded the child's right to FAPE;
 2. significantly impeded the parent's opportunity to participate in the decision making regarding FAPE; or,
 3. caused a deprivation of educational benefits.

NOTE: Virginia's special education hearing officers have been following this standard which has been established by the courts in the Fourth Circuit.

Filing a Complaint – SEA NEW IDEA '04 1415 (f)(3)(F)

NEW. This new provision states that the mandates in the law relative to due process do not prevent a parent from filing a complaint with the SEA [VDOE] under the state complaint resolution procedures.

NOTE. This provision concretely puts into the law the direction established by the U.S. Department of Education’s Office of Special Education Programs (OSEP) in a memorandum to SEAs, July 17, 2000. OSEP’s guidance references a parent’s right to file a complaint with the SEA regarding violations of the rights of parents or children with disabilities, when the dispute relates to an appropriateness issue; for example, what services are appropriate for a student with a disability; or the student’s eligibility for special education and related services. As with previous versions of the federal Act, the IDEA '04 does not mandate the complaint resolution procedures. The procedures, rather, are part of the implementing federal regulations and subsequent Virginia Regulations (at 8 VAC 20-80-78). Further, the federal and Virginia Regulations clarify that the SEA may not alter or interfere with a decision rendered by a hearing officer, and must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

Filing litigation – statute of limitations 8 VAC 20-80-76 O.1 IDEA '04 1415 (i)(2)(B)
--

ADDS to the mandate by creating a new federal default timeline of 90 days to appeal final due process decisions to court, unless the state has an explicit timeline for bringing such actions under Part B.

NOTE: Currently, the Virginia regulations state that an appeal may be filed within 1 year to state circuit court or federal district court, which according to current case law in the 4th Circuit is 2 years. VDOE is reviewing this requirement and the new federal timeline with the Office of the Attorney General to determine which timeline will apply.

Attorney’s Fees 8 VAC 20-80-76 N.4 & 5 IDEA '04 1415 (i)(3)(B)(I)(II) & (III)
NEW IDEA '04 1415 (i)(3)(D)(iii)

SEAs and school divisions may initiate court action to recover attorney’s fees if the case was frivolous, unreasonable or without foundation or was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the costs of litigation.

Attorney’s fees are not available for the resolution session meeting.

Filing Separate Requests

NEW IDEA '04 1415 (o)

NEW. The new provision states that nothing in the new law prevents a parent from filing a separate request for a due process hearing on an issue independent from a request already filed.

Alternate Means of Participation in Hearings

NEW IDEA '04 1414 (f)

NEW. This new provision cross references to both IEP meetings and meetings pursuant to due process actions. When conducting such meetings, the parent and school division may agree to use alternate means of meeting participation, such as videoconferences and conference calls.

(ATTACHMENT I)
Virginia Requirements to Be a Highly Qualified
Special Education Teacher

Category of special education teachers	Requirements under P.L. 108-446
All special education teachers	General Requirements: <ul style="list-style-type: none"> • Hold at least a B.A. • Must obtain full state special education certification or equivalent licensure • Cannot hold an emergency or temporary certificate
Consultative teachers and other special education teachers who do not teach core academic subjects	Only meet general requirements above
New or veteran elementary school teachers teaching one or more core academic subjects only to children with disabilities held to alternative academic standards (most severely cognitively disabled)	In addition to the general requirements above, may demonstrate academic subject competence through “a high objective uniform State standard of evaluation” (the HOUSSE process)
New or veteran middle or high school teachers teaching one or more core academic subjects only to children with disabilities held to alternative academic standards (most severely cognitively disabled)	In addition to the general requirements above, may demonstrate “subject matter knowledge appropriate to the level of instruction being provided, as determined by the Board of Education, needed to effectively teach to those standards”
New teachers of two or more academic subjects who are highly qualified in either mathematics, language arts, or science	In addition to the general requirements above, has two-year window in which to become highly qualified in the other core academic subjects and may do this through the HOUSSE process
Veteran teachers who teach two or more core academic subjects only to children with disabilities	In addition to the general requirements above, may demonstrate academic subject competence through the HOUSSE process (including a single evaluation for all core academic subjects)
Other special education teachers teaching core academic subjects	In addition to the general requirements above, meet relevant ESEA requirements for new elementary school teachers, new middle/high school teachers, or veteran teachers

(ATTACHMENT II)
**VIRGINIA REQUIREMENTS FOR TEACHERS NOT NEW TO THE TEACHING PROFESSION
 TO MEET THE DEFINITION OF HIGHLY QUALIFIED
 IN THE FEDERAL CORE ACADEMIC AREAS AND SPECIAL EDUCATION**

[Approved by the Board of Education on February 25, 2004]

Grade-Level Assignment	Requirements for Teachers Not New to the Profession to Meet the Definition of Highly Qualified
Elementary Education (prek-6)	<p>Experienced elementary school teachers, including those entering the teaching profession through the alternate route, who are licensed in elementary education with an active license may meet the “highly qualified” definition required in the No Child Left Behind Act (NCLB) by completing one of the following requirements:</p> <ol style="list-style-type: none"> 1. passed a rigorous state-approved academic subject test for elementary education [Section 9101(23)(B)(ii)]; OR 2. designated highly qualified in another state or the District of Columbia; OR 3. met the High Objective Uniform State Standard of Evaluation (HOUSSE) definition by the: <ol style="list-style-type: none"> a. completion of an earned advanced degree from an accredited college or university;* OR b. completion of a nationally recognized certification program in the teaching area or a certificate of advanced graduate studies in the teaching area;* OR c. completion of an institute(s) in the content areas of mathematics, science, language arts/reading/English, and social studies (history, government, geography, and economics) that meets high quality professional development criteria established by the Department of Education, OR d. completion of 180 professional development points from the eight options of college credit, professional conference, curriculum development, publication of article, publication of book, mentorship/supervision, educational project, and professional development activity within the most recent five-year period as outlined in <i>Virginia’s Licensure Renewal Manual</i> and based on the NCLB Act’s definition of high quality professional development;* OR e. completion of three years of successful teaching experience and <ol style="list-style-type: none"> (1) an academic major or equivalent in a subject area the teacher teaches; OR (2) an interdisciplinary major (or equivalent); OR (3) at least 9 semester hours in each core discipline area of mathematics; science; language arts/reading/English; and social studies (history, government, geography, and economics). <p><u>*For special education teachers to become highly qualified under HOUSSE, requirements in options 3a, 3b, and 3d must be completed in the content or academic subjects taught.</u></p>

Grade-Level Assignment	Requirements for Teachers Not New to the Profession to Meet the Definition of Highly Qualified
<p>Middle Education (6-8)</p>	<p>Experienced middle school teachers, including those entering the teaching profession through the alternate route, who are licensed in middle education with an active license may meet the “highly qualified” definition required in the NCLB Act by completing one of the following requirements:</p> <ol style="list-style-type: none"> 1. passed a rigorous state-approved academic subject test in each of the academic subjects in which the teacher teaches [Section 9101(23)(B)(ii)]; OR 2. designated highly qualified in another state or the District of Columbia; OR 3. have an academic major or coursework equivalent to an undergraduate academic major in the subject area(s) the teacher teaches [Section 9101(23)(B)(ii)]; OR 4. earned an advanced degree in a content area (master’s, education specialist, or doctorate) in the teaching area [Section 9101(23)(B)(ii)]; OR 5. completed a nationally recognized certification program in the teaching area or a certificate of advanced graduate studies in the teaching area [Section 9101(23)(B)(ii)]; OR 6. met the High Objective Uniform State Standard of Evaluation (HOUSSE) definition by the: <ol style="list-style-type: none"> a. completion of an earned advanced degree from an accredited college or university;* OR b. completion of an institute(s) in the content areas of mathematics, science, language arts/reading/English, and social studies (history, government, geography, and economics) that meets high quality professional development criteria established by the Department of Education; OR c. completion of 180 professional development points from the eight options of college credit, professional conference, curriculum development, publication of article, publication of book, mentorship/supervision, educational project, and professional development activity within the most recent five-year period as outlined in <i>Virginia’s Licensure Renewal Manual</i> and based on the NCLB Act’s definition of high quality professional development;* OR d. completion of three years of successful teaching experience and <ol style="list-style-type: none"> (1) an interdisciplinary major (or equivalent); OR (2) a minimum of 18 semester hours in the middle school area(s) taught—mathematics; science; language arts/reading/English; and social studies (history, government, geography, and economics). <p><u>*For special education teachers to become highly qualified under HOUSSE, requirements in options 6a and 6c must be completed in the content or academic subjects taught.</u></p>

Grade-Level Assignment	Requirements for Teachers Not New to the Profession to Meet the Definition of Highly Qualified
<p>Secondary (6-12)</p>	<p>Experienced secondary school teachers, including those entering the teaching profession through the alternate route, who are licensed in a secondary endorsement area with an active license may meet the “highly qualified” definition required in the NCLB Act by completing one of the following requirements:</p> <ol style="list-style-type: none"> 1. passed a rigorous state-approved academic subject test in each of the academic subjects in which the teacher teaches [Section 9101(23)(B)(ii)]; OR 2. designated highly qualified in another state or the District of Columbia; OR 3. have an academic major or coursework equivalent to an undergraduate academic major in the subject area(s) the teacher teaches [Section 9101(23)(B)(ii)]; OR 4. earned an advanced degree in a content area (master’s, education specialist, or doctorate) in the teaching area [Section 9101(23)(B)(ii)]; OR 5. completed a nationally recognized certification program in the teaching area or a certificate of advanced graduate studies in the teaching area [Section 9101(23)(B)(ii)]; OR 6. met the High Objective Uniform State Standard of Evaluation (HOUSSE) definition by the: <ol style="list-style-type: none"> a. completion of an earned advanced degree from an accredited college or university;* OR b. completion of an institute(s) in the content area(s) in which the teacher teaches that meets high quality professional development criteria established by the Department of Education; OR c. completion of 180 professional development points from the eight options of college credit, professional conference, curriculum development, publication of article, publication of book, mentorship/supervision, educational project, and professional development activity within the most recent five-year period as outlined in <i>Virginia’s Licensure Renewal Manual</i> and based on the NCLB Act’s definition of high quality professional development;* OR d. completion of three years of successful teaching experience and a minimum of 24 semester hours in the area(s) taught. <p>*For special education teachers to become highly qualified under HOUSSE, requirements in options 6a and 6c must be completed in the content or academic subjects taught.</p>

Grade-Level Assignment	Requirements for Teachers Not New to the Profession to Meet the Definition of Highly Qualified
<p>Pre-Kindergarten-Grade 12 (such as art, music, or foreign languages)</p>	<p>Experienced teachers, including those entering the teaching profession through the alternate route, who are licensed in a pre-kindergarten through grade 12 endorsement and teaching a prek-12 subject area with an active license may meet the “highly qualified” definition required in the NCLB Act by completing one of the following requirements:</p> <ol style="list-style-type: none"> 1. passed a rigorous state-approved academic subject test in the subjects the teacher teaches [Section 9101(23)(B)(ii)]; OR 2. designated highly qualified in another state or the District of Columbia; OR 3. have an academic major or coursework equivalent to an undergraduate academic major in the subject area(s) the teacher teaches [Section 9101(23)(B)(ii)]; OR 4. earned an advanced degree in a content area (master’s, education specialist, or doctorate) in the teaching area [Section 9101(23)(B)(ii)]; OR 5. completed a nationally recognized certification program in the teaching area or a certificate of advanced graduate studies in the teaching area [Section 9101(23)(B)(ii)]; OR 6. met the High Objective Uniform State Standard of Evaluation (HOUSSE) definition by the: <ol style="list-style-type: none"> a. completion of an earned advanced degree from an accredited college or university;* OR b. completion of an institute(s) in the content area(s) in which the teacher teaches that meets high quality professional development criteria established by the Department of Education; OR c. completion of 180 professional development points from the eight options of college credit, professional conference, curriculum development, publication of article, publication of book, mentorship/supervision, educational project, and professional development activity within the most recent five-year period as outlined in <i>Virginia’s Licensure Renewal Manual</i> and based on the NCLB Act’s definition of high quality professional development; * OR d. completion of three years of successful teaching experience and <ol style="list-style-type: none"> (1) an academic major or equivalent in the subject area(s) the teacher teaches; OR (2) a minimum of 24 semester hours in the area(s) taught. <p><u>*For special education teachers to become highly qualified under HOUSSE, requirements in options 6a and 6c must be completed in the content or academic subjects taught.</u></p>

Initial Distribution List:

VDOE staff
VDOE T/TAC Directors
Hearing Officers
Mediators
SSEAC
Local Advisory Committee Chairs
Parent Resource Centers
PEATC (PTI)
PADDA (CPRC)
Directors of Special Education
Education Directors for State Operated Programs
Superintendents – Virginia Schools for the Deaf and the Blind; Multi-Disabled
Directors – Private Special Education Day Schools and Residential Schools
Department of Correctional Education
Directors – University Special Education Teacher Training Programs
Office of the Executive Director, VA Supreme Court
VA School Board Attorneys

Posted VDOE web site: [link to Division of Special Education and Student Services](#)