

State Operated Programs

Mental Health Education Programs

Administrative Manual
Policies and Procedures

Revised 2011

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PROGRAM OVERVIEW

Preface

In this manual, Mental Health Education Programs (MHEPs) refer to the education programs in six mental health facilities that are supervised by the Virginia Department of Education. These include Central State Hospital, Commonwealth Center for Children and Adolescents, Eastern State Hospital, Virginia Treatment Center for Children, Northern Virginia Mental Health Institute, Southwestern Virginia Mental Health Institute, and Western State Hospital. As support services, the MHEPs provide appropriate educational services to school age patients residing in these Virginia mental health facilities. Education and instructional objectives are tailored to meet the individual student's needs in coordination with the facility treatment team and within the confines of the mental health facility. This manual references the policies and procedures governing the education of children and youth in the Commonwealth of Virginia established by the Virginia Department of Education.

I. Mission

The mission of Mental Health Education Programs is to provide appropriate educational services to children and youth residing in Virginia mental health facilities. In coordination with the facility treatment team, education is tailored to meet the individual student's needs. The education programs establish a positive academic experience by providing an environment that utilizes sound research-based instructional practices and fosters individual learning, self confidence, and positive/emotional behaviors and attitudes.

II. Legislation, Rules, and Regulations

A. The MHEPs comply with the following federal and state regulations:

1. Code of Virginia 22.1-7 and 22.1-214.2
2. Regulations Governing Special Education Programs for Children with Disabilities in Virginia, January 25, 2010
3. Individuals with Disabilities Education Improvement Act 2004, P.L. 108-446
4. Section 504 or the Rehabilitation Act of 1973
5. The Library of Virginia Records, Retention and Disposition Schedule, General Schedule No. 21. September 17, 2009. Series No. 009538 .

B. Interagency Agreements:

Interagency Cooperative Services Agreements have been developed between the Virginia Department of Education and other state agencies to further enhance the quality of services provided to children with disabilities. These are referenced in Part V of the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, January 25, 2010.

III. Functions of the Virginia Department of Education, Mental Health Facilities, Local Educational Agencies, State Operated Programs, and Mental Health Education Program

A. Virginia Department of Education:

Authorization has been granted by statute (22.1-7 and 22.1-214.2) to the Virginia Board of Education for the establishment, operation, and supervision of education programs in state mental health facilities. The Virginia Department of Education:

1. Provides annual funding for MHEP staff, materials and supplies, equipment, travel, and in-service training;
2. Contracts with local school divisions to provide for the fiscal management of the program;
3. Provides direct supervision for the MHEPs;
4. Provides technical assistance and consultative services in the interpretation and implementation of state and federal laws and regulations pertaining to the education of the disabled;
5. Supervises and evaluates the compliance of the education programs with state and federal laws and regulations;
6. Disseminates significant information derived from research, demonstration program, and projects involving the disabled;
7. Assists in developing job descriptions; and
8. Provides input into the hiring of the education administrator and teaching staff.

B. Mental Health Facilities:

According to the Code of Virginia 22.1-7 and the Virginia Special Education Regulations 8VAC 20-81-60 each state mental health facility shall provide an education program for all students, (0-21)

C. Local School Divisions (LEAs): (22.1-209.2)

1. Administer the facility budget for employee salaries, educational materials, and staff travel;
2. Hire education administrators, teaching staff, and support staff;
3. Establish the general policies of personnel administration; and
4. Provide for the evaluation of instructional and administrative personnel

D. Mental Health Education Program(s) [MHEPs]:

1. Provide educational services to children and youth Kindergarten through high school residing in state mental health facilities with a minimum of 5 1/2 hours a day of instruction.
2. Ensure that the educational services provided will allow the student to maintain and/or advance his/her current level of academic functioning;
3. Provide a Free Appropriate Public Education (*see Regulations Governing Special Education Programs for Children with Disabilities in Virginia 8 VAC 20-81-100*).
4. Ensure that students ages 2 – 21 receive services according to their IEP or 504 plan;
5. Provide a system of ongoing communication, regarding the student's current educational performance, with facility treatment staff, Local Educational Agencies (LEAs), parents/guardians, and other involved agencies; and
6. Administer assessment in accordance with the Virginia Accountability System and Statewide Assessment Program.

IV. Education Program Description

A. General Program Description

Criteria for admission to and discharge from these mental health facilities are not established by educational authority nor are such facilities instituted for elementary and secondary education purposes. Children and youth are admitted to these facilities for various lengths of time and with various instructional needs and abilities. The instructional program for each hospitalized child and youth will be tailored to fit his/her individual needs. Education staff assigned to MHEPs will work collaboratively with local school authorities of each student's home school division in an effort to support an effective educational transition. MHEP staff will provide a comparable education to the extent possible within a mental health facility. Credits, graduation and diplomas are awarded by the school division of legal residence.

B. Provision of Special Education Services

When a child or youth is admitted to a mental health facility with a state operated education program and has an existing Individualized Education Program (IEP), developed by an LEA or other legal educational entity, it is the responsibility of the MHEP educational personnel assigned to the state facility to ensure the continued implementation of the IEP. Modifications may be needed due to the nature of the patient's illness. Placement in such facilities is for non-educational reasons. The enrollment of a student with a disability in a MHEP due to hospitalization precludes consideration of the requirement that the educational placement be as close as possible to the student's home or school they would normally attend.

EDUCATION PROGRAM SERVICES & PROCEDURES

I. Enrollment

A. Criteria

1. Students who have graduated with Advanced Studies or Standard Diploma are not eligible for enrollment.
2. Students under age of majority who have obtained their GED are eligible for enrollment.
3. Students who are home-schooled are enrolled with permission from the parent(s)/guardian(s). Education staff will collaborate with the parent/guardian to determine a program of study.
4. Students who are suspended or expelled from a school division are enrolled in MHEPs.
5. Students regardless of immigration status are enrolled.
6. Students who qualify for a medical waiver are enrolled in the educational program.
7. Students who are considered homeless are enrolled in the educational program.
8. Students under the age of 5 are enrolled if they have a current Individualized Education Program (IEP).

B. Procedures

1. Students are enrolled on the first school day following admission to the facility. Weekends, holidays, inclement weather days and teacher workdays are NOT considered a school day.
2. Once a student is enrolled, his/her status is maintained until discharge regardless of length of stay or attendance.
3. LEAs are notified and records are requested on the student's first day of enrollment.
4. Educational information necessary for the immediate provision of services is obtained by phone/fax from:
 - a. public school
 - b. private facilities with signed release

II. Attendance

MHEPs are considered Local Education Agencies (LEAs) by the Virginia Department of Education; therefore, students in MHEPs receive credit for the time enrolled. No student may be denied transfer of attendance credit from a MHEP. Students are withdrawn from their school division's roll upon enrollment in a MHEP.

III. Special Education and Section 504

When a student is admitted to a state operated education program and has an existing Individualized Education Program (IEP) or a 504 Plan developed by a local education agency (LEA) or any other legal educational entity. It is the responsibility of the educational personnel assigned to MHEPs to provide comparable services, in consultation with parents, until the MHEP either adopts the previous IEP or 504 Plan or develops a new one. As a result of the patient's illness, the existing IEP or 504 Plan may require modifications.

IV. English Language Learners

Under provisions of the Civil Rights Act of 1964, the native language of each student must be identified. This information is essential to provide meaningful instruction. A Home Language Survey must be completed for all enrolled students.

If the first language of a student is not English, the English language skills of the student must be determined using the WIDA - ACCESS Placement Test™ (W-APT™) to determine his/her Limited English Proficiency (LEP). Each student must be evaluated regardless of his/her oral ability. This is not necessary if the LEP level can be obtained from the home school or LEA.

The World-Class Instructional Design and Assessment (WIDA) English Language Proficiency (ELP) and the Assessing Comprehension and Communication in English State-to-State for English Language Learners (ACCESS for ELLs) have been approved by the Virginia Board of Education. The chart below describes the status codes.

LEP Student Reporting	
LEP Status Code	WIDA English Language Proficiency (ELP) Level
15	Level 1 – Entering
16	Level 2 – Beginning
17	Level 3 – Developing
18	Level 4 – Expanding
19	Level 5 – Bridging, First Year
20	Level 5 – Bridging, Second Year
21	Level 6 – Reaching, First Year (Reclassified as Non-LEP, no longer requires ACCESS for ELLs)
22	Level 6 – Reaching, Second Year

Notably, if the LEP status of a student is unknown or cannot be determined by the results of the W-APT™, the student should be classified as Level One for reporting purposes.

V. Grades and High School Credits

A. Grades

1. Grades are given when a student is enrolled in school three or more days.
2. Due to the short term nature of enrollment, MHEPs do not use the grade “incomplete” (I) or (IC).
3. Students are graded on academic performance in relationship to their ability to engage and to respond to instruction.
4. In some instances, no grade (NG) may be assigned in consultation with the Education Director/designee.

B. High School Credit

1. MHEPs do not award high school credits. An exception may be made on a case by case basis with approval from the Program Specialist for State Operated Programs at the Virginia Department of Education.
2. Upon return to the home school, that LEA grants credit for high school classes.
3. Grades and attendance while enrolled in MHEPs are reported to the LEA for use in determining credits.

VI. State Operated Programs’ Student Education Records

A. Definition

State Operated Programs’ Student Education Records may include but are not limited to: student information, assessments, behavioral reports, grades, course work, test scores, copies of student records from the Local Education Authority (LEA), MHEP created assignments, and Individual Educational Programs (IEPs). The State Operated Programs’ Student Education Records are referred to as “education records” in this document.

The official Student’s Scholastic Record is maintained by the Local Education Authority (LEA) residence.

B. Access

1. The MHEPs permit parents or eligible students to inspect and review educational records which are collected, maintained, or used by the programs. The MHEPs comply with such a request without unnecessary delay. In responding, the MHEPs arrange a meeting with the parent or eligible student at a mutually convenient time. The teacher/educational consultant and administrator are to be available to answer any questions or explain information included in the record.

2. The MHEPs comply with a request to inspect and review student education records before any meeting regarding an IEP or hearing relating to the identification, evaluation, or educational placement of the student or provision of a free appropriate public education.
3. The right to inspect and review student education records includes:
 - a. The right to a response from a MHEP to reasonable requests for explanations and interpretations of the student education records;
 - b. The right to request that a MHEP provide copies of the student education records. This request is available if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the student education records; and
 - c. The right to have a representative of the parent inspect and review the student education records.
4. The MHEPs may presume that both parents have the authority to inspect and review records relating to the student unless a MHEP has been advised that both parents do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.
5. MHEPs keep a record of parties obtaining access to student education records collected, maintained, or used.
6. MHEPs maintain for public inspection a current listing of names and positions of employees who have access to personally identifiable data in student education records.
7. If any student education records include information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.
8. When requested, MHEPs provide parents or eligible students with a list of the types and locations of student education records collected, maintained, or used by the programs.

C. Disclosure

1. When a request for disclosure of student education record data is made, such a request shall be granted immediately, if practical, but in no case more than 5 business days after the date of the request. If a MHEP determines that it is practically impossible to provide the requested records or to determine whether they are available within the 5 business days, the MHEP shall inform the requesting party and shall have an additional 7 business days to provide the requested records.
2. MHEPs may disclose, upon student transfer, information from student education records to another MHEP or LEA without parental consent unless prohibited by other applicable law.
3. MHEPs maintain with the student's file a record data disclosure form showing:
 - a. the parties who have requested and/or obtained student education record data disclosure, with the exception of adult clerical and professional personnel within the MHEPs; the parent or eligible student; and the parties receiving directory information;
 - b. the agency or institution represented, if appropriate;
 - c. the date of the disclosure;
 - d. the specific legitimate interest of such disclosure and the purpose for which the data will be used; and
 - e. the signature of the administrator.
4. The record data disclosure form shall be available to the parent or eligible student, to school officials responsible for record maintenance, and to parties authorized.

D. Annual Notice

The MHEP management procedure for student education records shall require notification, at least annually, to the parents of students in attendance (including those parents identified as having primary or home language other than English) and eligible students in attendance by such means as are reasonably likely to inform them of their rights as follows:

1. the types and location of student education records and information maintained therein;
2. the title and address of the official responsible for the maintenance of student education

- records, the parties to whom data may be disclosed, and the purpose for disclosure;
3. the policies for reviewing and expunging student education records;
 4. the policy and procedures for disclosure of data from student education records;
 5. the right of parents and eligible students to challenge the content of student education records and to file with the Family Educational Rights and Privacy Act Office a complaint concerning an alleged failure by the LEA to comply with 20 U.S.C.1232g;
 6. the fee, if any, to the parent or eligible student for reproducing copies of student education records;
 7. the data designated as directory information (directory information is not maintained by MHEPs); and
 8. the right of parents and eligible students to obtain, upon request, a copy of the LEA written policy and procedure on the management of student education records and the location of the same.

E. Confidentiality and Consent

Parental consent must be obtained before personally identifiable information is:

1. disclosed to anyone other than officials of LEA's and other MHEP's collecting or using the information under this part, subject to paragraph two below or used for any purpose other than meeting a requirement under this part.
2. MHEPs may release information from educational records to LEAs and other MHEPs without parental consent, unless prohibited by other applicable law.

F. Dispute of record accuracy

1. The parent or eligible student who believes that information in the student education record of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that a MHEP amend it, regardless of when the information was entered in the record.
2. MHEP decides whether to amend the student education record in accordance with the request within a reasonable period of time, no more than 15 business days after the receipt of the request. If the MHEP agrees to amend, then the amendment shall be made in writing, inserted in the student's student education record, and maintained in accordance with maintenance and disposition.
3. A MHEP may utilize informal attempts to reconcile differences; however, the parent or eligible student may exercise the right to a hearing without benefit of the decision from

any informal proceeding.

4. If a MHEP decides to refuse to amend the student education record of the student in accordance with the request, it shall, within 15 business days, inform the parent or eligible student of the refusal and advise of the right to a hearing.
5. A MHEP, on written request, provides an opportunity for a hearing to enable the parent or eligible student to challenge information in the student education record to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.
6. If, as a result of the hearing, a MHEP decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the student education record of the student accordingly and so inform the parent or eligible student in writing.
7. If, as a result of the hearing, a MHEP decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of an eligible student of the right to place in the student education record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the MHEP.
8. Any such explanation placed in the student education record of the student shall:
 - a. be maintained by a MHEP as part of the student education record of the student as long as the record or a contested portion thereof is maintained, and
 - b. be disclosed by a MHEP when the student education record of the student or the contested portion thereof is disclosed to any party.
9. Any hearing related to the management of a student's education record shall be conducted according to the procedures as follows:
 - a. The hearing shall be held within 45 calendar days after a MHEP has received the written request. The parent or the eligible student shall be given written notice by the MHEP of the date, place, and time of the hearing.
 - b. The hearing may be conducted by any party, including an official of a MHEP who does not have a direct interest in the outcome of the hearing. The parent or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues and to question the

person(s) who have entered the information;

- c. The parent or eligible student may be assisted or represented by individuals of his choice, including an attorney, at his expense;
- d. A MHEP shall make its decision in writing within a reasonable period of time after the conclusion of the hearing;
- e. The decision of a MHEP shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision; and
- f. The evidence shall become a permanent part of the student education record.

G. Retention

The student record is retained until the student exits the program then is transferred to the LEA. A copy of the record may be maintained for up to five years at the discretion of the MHEP.

VII. State Assessments

Students enrolled in MHEPs will participate in the State Testing Program. Copies of the Standards of Learning tests are secured from the Office of State-Operated Programs, Department of Education or accessed via Pearson for on-line test administration. The MHEP sends student test scores to the responsible LEA. If a student completes an SOL test while enrolled in a MHEP his or her scores are not reflected in the accountability data of the home LEA

VIII. Modification to Educational Services

All students residing in mental health facilities are afforded the opportunity to participate in an education program. If a student is medically unstable or exhibits behavior that poses a danger to self and/or others, a modification to educational services may be needed. The student's treatment team including education staff makes this determination and documents any changes on a Waiver/Modification form. This form is signed by the physician or his/her designee and reviewed regularly. A copy of this form is sent to the parent(s) and forwarded to the LEA upon discharge.

IX. Discharge

The treatment team determines when a patient is ready to discharge from a Mental Health facility. Copies of pertinent educational records, including progress reports, IEPs, eligibility determination, and

academic records will be sent to the LEA or other receiving agency(s).

If a student is in the referral, evaluation, or eligibility process for special education services upon discharged, all educational records will be forwarded and an appropriate referral will be made to the receiving LEA, MHEP, or other agency

SPECIAL EDUCATION IDENTIFICATION & SERVICES

I. General Policy Statement

It is the policy of the Mental Health Education Program (MHEP) to adhere to federal and state regulations as they have been promulgated by the United States Department of Education and the Virginia Board of Education to implement special education program for children with disabilities, consistent with the Individual with Disabilities Education Act (IDEA). Specifically, these mandates are detailed in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (Virginia Regulations) and any additional documents that the Virginia Department of Education publishes to address federal and state statutes and regulations for delivering special education and related services to children.

The following sections of Regulations Governing Special Education Programs for Children with Disabilities in Virginia January 25, 2010 are not applicable to State Operated Mental Health Education Programs.

- Child Find (8VAC20-81-50)
- Children who transfer (8VAC20-81-120)
- Least Restrictive Environment and Placement (8VAC20-81-130)
- Placement of students at the Virginia School for the Deaf and Blind (8VAC20-81-140)
- Private School Placements (8VAC20-81-150)

II. Child Study Committee / Referral

- A. Referrals will be accepted in written, electronic, or oral form by each school's Education Director or designee for children aged two – twenty one, suspected of having a disability, regardless of whether the child is enrolled in public school. Referrals will be received from any source including parents, school staff, the school-based team, the Virginia Department of Education, any other state agency, or other individuals regarding children who are residents of the locality or who attend a private school that is located within the locality. Once a referral is received, the Education Director or designee will ensure that the referral is documented on a referral form which includes the child's name, the reason for the referral and efforts made to address the concerns, the date the referral was received, the name of the person or agency making the referral, the parent's name, and contact information for the parent.
- B. Within 10 business days, the referral will be reviewed by a school team which includes the referring source, as appropriate, the Education Director or designee, at least one teacher, at least one specialist, and one member who is knowledgeable about alternative interventions and about

procedures required to access programs and services that are available to assist with children's educational needs. Additional professionals may be included as appropriate and based on the reason for the referral.

- C. This team will review the reason for the referral and review the child's record and any other performance evidence or data that will be used to make recommendations for educational and/or behavioral needs. The team may determine that:
1. the referral for special education evaluation is not needed for the student, noting that the child is performing adequately;
 2. recommend interventions with prescribed review dates; or
 3. refer the child for a special education evaluation.

All decisions of this team shall be documented in writing and include information upon which a decision was based. Such documentation shall be maintained in the student's scholastic record.

- D. The team may use a response-to-intervention approach for identifying recommended strategies which are research-based and will gather data documenting the student's response to the applied intervention. The team will schedule regular meetings to discuss the data and the student's progress and to determine whether additional interventions are needed. The use of these strategies will not delay or interfere with the appropriate referral for special education evaluation which may be administered concurrently with team recommended interventions. Referrals from the team for a special education evaluation will be forwarded to the special education administrator or designee within 3 days of their decision.
- E. If the team decides not to refer the student for a special education evaluation, the parent will be provided with prior written notice indicating that the request for a special education evaluation was refused, the reasons for the decisions, a description of other options the team considered and reasons why they were not accepted, a description of the evaluation information (each evaluation procedure, assessment, record or report) used to make the decision, and any other factors that were relevant to the team's decision, and their right to appeal the decision through a due process hearing. The parents will be given a copy of the procedural safeguards.
- F. If the referral is made to the special education administrator or designee, within three business days, the special education administrator or designee will initiate the evaluation-eligibility process, forward the referral to the school team to review and respond to the request, or deny the request. If the referral is made by a parent, the parent will be notified of the decision. If the request is denied, the parent will be provided prior written notice as already described and as is required at 8 VAC 20-81-170 of the Virginia Regulations.

III. Referral for Initial Evaluation

- A. The MHEP will ensure that these referral procedures apply to all children, aged two to twenty one, inclusive, who are residents in accordance with the Virginia Regulations, whether enrolled in public school or not, who are suspected of having a disability.
- B. All referrals for initial special education evaluations will be processed using the referral procedures detailed above. Referrals from a school-based team or referrals accepted and initiated by the special education administrator/designee will result in the start of the process of determining eligibility for special education and related services.
- C. Once the referral for a special education evaluation is made by the school-based team or accepted by the special education administrator/designee, prior written notice indicating that the child has been referred for an evaluation and the purpose of the evaluation along with the procedural safeguards notice will be provided to the parents in their native language or primary mode of communication. Parents will also be informed of the procedures used to determine what evaluation data is needed and request any evaluation information that the parent may have on the child.
- D. Evaluations to be administered will be identified and will be included to enable the MHEP to gather relevant functional, developmental, or academic information about the child so the eligibility team will be able to determine if the child is a child with a disability in need of special education and related services. The evaluation process will be sufficiently comprehensive to enable the MHEP to determine, if the child is eligible, the child's special education and related services needs, as well as educational needs. The Education Director/designee will secure informed consent for the evaluation process prior to initiating the evaluations.
- E. Professionals will be assigned to complete evaluations consistent with their expertise, and will be provided with a deadline for completion to ensure that eligibility decisions are made within 65 days from the receipt of the referral for special education evaluation. The 65 business day timeline may be extended if the parent and eligibility team agree in writing that additional time is need to obtain data. This timeline does not apply in the following circumstances:
 - 1. for those students who parents repeatedly fail to produce the child for the evaluation.
 - 2. for a child that enrolls in the MHEP after the 65 business days has begun in a previous school division, but prior to determination by the child's previous school and/or school division as to whether the child is a child with a disability, the MHEP will work to complete the evaluation expediently. This exception only applies if the MHEP is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and MHEP agree to a specific time when the evaluation will be completed.
- F. The staff will comply with all requirements related to confidentiality of student records

throughout the evaluation and eligibility process.

G. The MHEP acknowledges the following parent consent requirements:

1. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.
2. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.
3. The MHEP shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.
4. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the MHEP is not required to obtain parental consent to determine whether the child is a child with a disability if:
 - a. despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;
 - b. the rights of the parents of the child have been terminated in accordance with Virginia law; or
 - c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.The MHEP shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.
5. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the MHEP may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The MHEP does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

IV. Procedural Safeguards – *See Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81-170)* for a description of the following:

- A. Opportunity to examine records; parent participation
- B. Independent educational evaluation
- C. Prior written notice by the LEA; content of notice
- D. Procedural safeguards notice
- E. Parental consent

- F. Parental rights regarding use of public or private insurance
 - G. Confidentiality of Information – refer to *State Operated Programs Student Education Records (Pages 12 – 17)*.
 - H. Electronic mail
 - I. Electronic signature
 - J. Audio and video recording
The MHEP limits the use of audio recordings to only those situations required in the Virginia Regulations. The MHEP also allows the use of video recordings for all situations in which audio recording are required in the Virginia Regulations.
- V. Surrogate Parents
- A. The special education administrator/designee for the MHEP will be responsible for identifying those who are willing and qualified to serve as surrogate parents.
 - B. To be qualified as a surrogate parent, an individual must have no personal or professional interest that conflicts with the interest of the child, have knowledge and skills that will ensure adequate representation of the child, be of the age of majority, and not be an employee of the Virginia Department of Education, the MHEP, or any other agency that is involved in the education or care of the child. If otherwise qualified, a person will not be considered to be an “employee” solely because they are paid to serve as a surrogate parent.
 - C. If the child is an unaccompanied homeless youth, the special education administrator/ designee may permit appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate must meet the other qualifications for a surrogate parent, and may serve only until a surrogate parent, meeting all of the qualifications for a surrogate parent, can be assigned.
 - D. While every effort will be made to secure individuals willing to serve as surrogates from within the local area, individuals from outside the area may be secured if necessary to ensure that someone qualified is available to represent the needs of the students in meetings pertaining to special education eligibility and services. In addition, others may be eligible once a need is identified, such as a child’s relative, depending on the child’s needs, and the availability of qualified persons familiar with the child and who would otherwise qualify. The special education administrator/designee may involve the child in the selection, if appropriate.
 - E. When a school cannot identify or with reasonable efforts locate someone who qualifies as a “parent” in accordance with the Virginia Regulations, the school will contact the special education administrator/designee who will confirm the need for a surrogate and appoint a

surrogate within 30 calendar days for the student, if one is needed. Once appointed, the child (as appropriate to the disability), the appointed surrogate parent, and the person charged with the responsibility of the child will be notified in writing that the appointment has been made. The surrogate parent will be assigned to serve for the duration of the child's admission to the MHEP.

- F. Termination of a surrogate parent will occur when the child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed in accordance with the transfer of rights procedures; when the child is no longer eligible for special education services and the surrogate parent has consented to the termination of services; when legal guardianship has transferred to a person who can serve as the parent in special education matters; when the parent whose whereabouts previously were unknown is now known and the parent is available; or when the appointed surrogate is no longer qualified.
- G. If a surrogate parent wants to challenge the surrogate qualifications, or if the surrogate is terminated prior to the end of the appointment and wishes to appeal the decision, a request for a hearing may be made to the division superintendent who will convene a panel which shall include a Education Director, a school board member, and the school board attorney who will hear evidence presented to make a decision.

VI. Evaluation and Reevaluation

- A. A school-based team, consistent with the make-up of an IEP team, will determine which evaluation components are needed to provide data required for the eligibility team to make a decision. In order to make this determination, the team will meet to review the existing evaluation data, including evaluations and information provided by the parents and current classroom-based, local, and/or state assessments and classroom-based observations, and observations by teachers, and related service providers. The parent will be provided written notice of the meeting at least five business days prior to the meeting to ensure that the parents will have an opportunity to participate in the review. The notice will include the purpose, date, time, and location of the meeting and who will be in attendance, and it will inform the parent that both the MHEP and the parent may invite to the meeting other individuals, including related service personnel, who have knowledge of expertise about their child, if appropriate.
- B. Based on the information available, the team including the parent(s) will identify what additional data is needed, if any, to determine the following:
 - 1. Whether the child is (or continues to be) a child with a disability
 - 2. The present educational needs of the child,

3. The child's present level of academic achievement and related developmental needs,
 - a. Whether the child needs (or continues to need) special education and related services, and
 - b. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals included in the child's IEP and to participate, as appropriate, in the general education curriculum.

- C. If it is determined that additional data is needed, school personnel will ensure that tests and other evaluation materials will be completed, as necessary, to obtain the data to address issues B.1-3, above.

- D. If no additional data is needed to address the issues above, the school-based team will provide the parent(s) with prior written notice of the decision. The prior written notice will meet all requirements detailed in the Virginia Regulations at 8 VAC 20-81-170. The notice will include information regarding the determination and the reasons for it, and the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the educational needs. In addition, the school-based team will document that the parent was informed of the following:
 1. The MHEP is not required to conduct an evaluation if the team has determined that it has enough information to determine whether the child is or continues to be a child with a disability and to determine the child's educational needs, unless the parent (s) request an evaluation for these specific purposes;
 2. A review of the information that conforms with the required process will be considered the evaluation if no additional data are needed;
 3. The parent has the right to appeal the decision through the use of mediation or due process proceedings.

- E. If the school-based team determines NOT to evaluate a child suspected of a disability, it must provide the parent with a prior written notice that meets all requirements detailed in Virginia Regulations, at 8 VAC 20-81-170, including the parent's rights to appeal the decision through due process proceedings.

- F. MHEP personnel will obtain informed parental consent before conducting any evaluations or reevaluations. For a reevaluation, if the MHEP can demonstrate reasonable measures to obtain consent and that the child's parent failed to respond, the MHEP will proceed with the evaluation as if consent has been received. To demonstrate reasonable measures, the MHEP will have provided notice to the parent in writing at least twice and will have contacted the parent by phone if the parent has a phone.
 1. If the parent refuses consent, the MHEP may pursue those evaluations by using due

process hearing procedures or mediation, but the school division is not required to do so.

2. Consent will NOT be required for any of the following:
 - a. If the team decides that a review of existing data is sufficient;
 - b. For a teacher or related service provider to report their observations of the child or ongoing classroom evaluations; or
 - c. Before administering a test or evaluation that is administered to all children, unless parental consent is required from all parents prior to the administration of the test.

- G. A variety of evaluation or assessment tools and strategies, sufficiently comprehensive to identify all of the child's special education and related service needs (whether or not commonly linked to the disability category used for the child's classification), will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).
 1. This information will be used to determine whether the child is a child with a disability, the child's educational needs, and the content of the child's IEP.
 2. No single measure will be used as the sole criteria for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

- H. Initial evaluations and reevaluations other than the triennial shall be completed so that the eligibility decision can be made within 65 business days from the receipt of the referral by the Eligibility Coordinator. If the parent and the MHEP agree, the 65 business day timeline may be extended in order to obtain information that could not be obtained during the 65 business day timeline. This agreement must be in writing. Triennial reevaluations will be initiated in sufficient time to ensure that an eligibility determination can be completed within three years of the anniversary date of the previous eligibility decision.

- I. All evaluation assessments and materials will be selected and administered to ensure no racial or cultural bias. In addition, evaluations will be provided and administered in the child's native language and in ways that are most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
 1. All assessments will be used for the purposes for which are valid and reliable and will be administered by personnel that are trained and knowledgeable regarding the instructions provided by the producer of the assessments.
 2. Assessment tools will be selected to assess specific areas of educational need rather than produce a single general intelligence quotient.

3. If the child has impaired sensory, motor, or communication skills, assessments will be used to take that into consideration so as to measure accurately the child's aptitude or achievement or whatever the test is designed to assess, rather than reflecting the impairment in the child's sensory, motor, or communication skills.
 4. Assessments that are used to assess the relative contribution of cognitive, behavior, physical, or developmental factors will be technically sound.
 5. If the child being assessed is limited in English proficiency, assessments will be selected and administered to ensure that they measure the extent that the child has a disability and needs special education, rather than measuring the child's English skills.
- J. If assessments are conducted under non-standard conditions, those conditions, including the extent to which the assessment varied from standard conditions, will be included in the evaluation report and whether the non-standardized assessment administered by a qualified professional is useful in the determination of whether the child is a child with a disability and is useful in contributing to the contents of the child's IEP.
- K. If the evaluation requires assessments in more than one area relating to the suspected disability, a team of professionals, including at least one teacher or other specialist with knowledge in the areas of the suspected disability, will complete the assessments. A part of the evaluation process will include an observation focused on academic performance in the general education classroom that will be made by at least one professional on the evaluation team other than the child's teacher. If the child is not school-age, the observation will be conducted in an environment appropriate for a child of that age.
- L. All areas related to the suspected disability will be assessed by qualified professionals which may include, as appropriate, health, vision, hearing, social and emotional development, general intelligence, academic performance, communication skills, motor skills, and adaptive behavior. Evaluation components may include educational, medical, sociocultural, psychological, or developmental assessments. Hearing, however, will be screened for all children during an initial eligibility evaluation. If the child is hearing impaired or deaf, or if the child fails two hearing screening tests, a complete audiological evaluation, including tests to assess inner and middle ear functioning will be conducted.
- M. The evaluation reports will be available to parents at the student's school at least two business days prior to the meeting to determine eligibility. A written copy of the reports will be provided to parents prior to or at the meeting where the eligibility team reviews reports, or immediately following the meeting, but no later than 10 days after the meeting. Copies of the evaluation reports will be provided at no cost to parents.
- N. If a child transfers to the MHEP during the evaluation process, the MHEP will work with the child's previous school and/or school division to ensure that the child's evaluation and eligibility determination process is promptly completed. In this instance, the 65 business timeline for the completion of the evaluation and eligibility process may be extended if the following

requirements are met:

1. The parent and the school-based team agree to extend the timeline and set a mutually-agreeable date upon which the evaluation and eligibility process will be completed, and
 2. Sufficient progress is being made to ensure a prompt completion of the evaluation.
- O. Reevaluations will be conducted at least every three years, unless the MHEP and the parent agree that a reevaluation is not necessary.
- P. Reevaluations may be conducted more frequently if the MHEP determines that it needs new information to determine the child's educational or related services needs, including improved academic achievement and functional performance, or if the parent(s) or teacher(s) request a reevaluation. Upon the request from a parent or teacher, the child's school-based team, consistent with the make-up of the IEP team, will convene to discuss the request and determine what, if any, evaluation components will be conducted. Evaluations will not be conducted more than once per year unless the parent and MHEP agree otherwise. Prior written notice of the decision that meets the requirements in the Virginia Regulations, at 8 VAC 20-81-170 C., will be provided to the parent.
- Q. For a child who is home-schooled, home-tutored, or who is parentally placed in a private school at the parent's expense, the MHEP is not permitted to use mediation or due process to pursue consent from a parent who refuses to provide consent for an evaluation or reevaluation, or who fails to respond to a request for consent. In this instance, the child will not be evaluated, and will not be eligible for equitable services as a parentally placed student under 8 VAC 20-81-150 of Virginia Regulations.
- R. The MHEP will not be required to evaluate a student solely because the student is graduating with a standard or advanced standard diploma, even though this will be considered a change in placement. Prior written notice, however, will be provided to parents(s) informing them that upon graduation the child will no longer be eligible for special education and related services. In addition, the MHEP will ensure that all requirements of the Virginia Regulations, at 8 VAC 20-81-170 regarding prior written notice, will be met.

VII. Eligibility

- A. Following the completion of the administration of the assessments and other evaluation materials, or after a determination by the school-based team that additional data was not needed, the eligibility team will determine if the child is or continues to be a child with a disability and the child's educational needs. The eligibility decision must be made on an individual basis.
- B. The eligibility team will, at minimum meet the team composition of the IEP team. This team

must include personnel representing the disciplines providing the assessments, the Education Director or designee (serving as the special education administrator's designee), the parent(s); a special education teacher; at least one general education teacher of the child (or someone qualified to teach the child of that age if the child does not have a teacher or if the child is a preschooler); at least one person qualified to conduct individual diagnostic examinations (such as a school psychologist, speech pathologist, or remedial reading teacher). This team will be qualified to conduct individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development, as appropriate, interpret the assessment and intervention data, apply critical analysis to the data, and develop appropriate educational and transitional recommendations based on the assessment data. The eligibility team will provide the parent with procedural safeguards in accordance with the Virginia Regulations, at 8VAC 20-81-170, including the notice requirements, when determining eligibility and in ensuring the confidentiality of records.

- C. When interpreting data to determine whether or not a child is a child with a disability and to determine the child's educational needs, the team will carefully consider, and document its use of information from a variety of sources, including all of the assessments prescribed by the school-based team for the evaluation, aptitude and achievement tests, parent input and teacher recommendations, response to scientifically-based interventions as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The team may also use information obtained as a result of the child's participation in the school division's response to intervention process. The team will also consider any evaluation information provided by the parent(s).
- D. Prior to determining a child's eligibility, the eligibility team must also review information from an observation of the child. The observation must have occurred in the child's learning environment and it must have documented the child's academic performance and behavior in the area of difficulty. The observation may have occurred in routine classroom instruction and monitoring of the child's performance before the child was referred for an evaluation. In the alternative, at least one member of the eligibility team must conduct an observation of the child's academic performance in the classroom after the child was referred for an evaluation and parental consent was obtained. (For preschool children, or a student out of school, the team member shall observe the child in an environment appropriate for a child of that age.)
- E. The team will analyze the data against eligibility criteria. The team will only find a child eligible for special education and related services if the child meets the eligibility criteria to be a child with a disability, and if the team finds that there is documented evidence that as a result of the child's disability, the child needs special education and related services. Lack of appropriate instruction in essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies), a lack of appropriate instruction in math, or a child's limited English proficiency will be considered and, if these are determining factors, the child will not be found eligible.
- F. The eligibility team will consider, as part of the evaluation, data that demonstrates that prior to,

or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with the requirements of the No Child Left Behind Act, at §1111(b)(8)(D) and (E), including that the instruction was delivered by qualified personnel. There must be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.

- G. The team will work toward consensus in reaching its decision. If the team, does not reach consensus and if the decision does not reflect a member's conclusion, then the team member will be required to submit a written statement indicating the member's conclusion. Written parental consent will be secured for the initial eligibility determination and any change in categorical identification.

- H. A child, aged two, who was previously served by Part C, must meet the criteria of Part B in order to be provided special education and related services. For a child served by Part C after age two, and whose third birthday occurs during the summer, the IEP team for an eligible child will determine when the child will begin to receive Part B services, thus transitioning from Part C to Part B.

- I. A child will only be provided related services when found eligible for special education. Once a child is found eligible for special education, the IEP team will make decisions about the child's need for related services, and may request an evaluation, if determined necessary. All information presented will be documented and summarized during the meeting. A summary of deliberations will include the basis for the determination of eligibility and a written statement from any member who disagrees with the team's conclusion. The summary may include other recommendations, will be maintained in the child's student education record, and will be forwarded to the IEP team, including the parent, following the eligibility determination.

- J. For a child found not eligible, information relevant to instruction will be provided to the child's teachers or any appropriate committee. In addition, prior written notice, in accordance with 8 VAC 20-81-170, will be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures. If the child is parentally-placed in a private school within the LEA, but the parent resides in a different locality, parent consent will be secured before sharing the information with another local educational agency.

- K. The eligibility team must provide the parent at no cost a copy of all of the documentation regarding the eligibility determination. This documentation must include a statement of:
 - 1. Whether the child has a specific disability.
 - 2. The basis for making the determination including as assurance that the eligibility determination was made in accordance with the Virginia Regulations regarding determining eligibility and educational needs.

3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
 4. The educationally relevant medical findings, if any.
 5. If the child participated in the division's response to intervention process, a statement of the instructional strategies used and the student-centered data collected during that process. This document must also include:
 - a) Information regarding the school division's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - b) The strategies that were used to increase the child's rate of learning; and
 - c) The parent's rights to request an evaluation.
 6. If a child is determined eligible as child with a specific learning disability, document that the eligibility team's determination was consistent with each of the requirements of 8VAC 20-81-80 T.2.
- L. The MHEP does use the classification of developmental delay for the detection of students with disabilities for IDEA eligibility. This means a disability affecting a child ages two by September 30 through six inclusive.
- M. Within 30 days of an initial determination of eligibility, an IEP must be developed for the child in accordance with the requirements in the Virginia Regulations, at 8 VAC 20-81-110. Following a reevaluation, unless there is a change in the child's eligibility for special education and related services or a change in the child's educational needs, or unless the parent requests a meeting to review the child's IEP, the IEP team is not required to convene.

VIII. Individualized Education Program

Unless noted otherwise, refer to the following: *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-110)

- A. Responsibility
- B. Accountability
- C. IEP team
- D. IEP team attendance

The MHEP permits required members of the IEP team to be excused from attending the IEP team meeting, in whole or part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and MHEP consent in writing to the excusal, and if prior to the meeting, the member provides the parent and the IEP

team written input into the development of the child's IEP.

- E. Parent participation
- F. Development, review, and revision of the IEP
- G. Content of the individualized education program
- H. Agency responsibilities for secondary transition services

- I. Amendment to the IEP
After a child's annual IEP team meeting for the school year, the parent(s) and the MHEP will agree to develop a written amendment to a child's IEP without convening an IEP meeting. If changes are made to a child's IEP without a meeting, the MHEP must ensure that the child's IEP team is informed of the changes, and that the parent, upon request, is provided a revised copy of the child's IEP with the amendment incorporated. This process is not a substitute for the required annual IEP meeting.

- IX. Discipline procedures (8VAC 20-81-160)
- X. Transfer of rights at age of majority (8 VAC 20-81-180)
- XI. Mediation (8 VAC 20-81-190)
- XII. Complaint resolution procedures (8 VAC 20-81-200)
- XIII. Due process hearing (8 VAC20-81-210)
- XIV. Free appropriate public education (FAPE) (8 VAC 20-81-100)

The MHEP prohibits the harassment of children with disabilities in academic and nonacademic settings during the school day and for school-sponsored extracurricular activities.

XV. Termination of special education and related services (8VAC 20-81-90)

XVI. Disproportionality

Concerns regarding discrepancies/disproportionality based on race and ethnicity are not applicable to State Operated Mental Health Education Programs.

SECTION 504 IDENTIFICATION and SERVICES

I. Introduction

- A. Section 504 of the Rehabilitation Act of 1973 is the portion of the Act originally authorized under Public Law 93-112 that states “no otherwise qualified individual with a disability in the United States shall, solely by reason of his or her disability, be excluded from the participation in, or denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance”.
- B. Section 504 protects any person who:
 - 1. has a physical or mental impairment which substantially limits one or more major life activities;
 - 2. has a record of such an impairment; or
 - 3. is regarded as having such an impairment.
- C. The law provides supports only for those who have a physical or mental impairment that substantially limits one or more major life activities. Students must meet the criteria for eligibility in order to qualify for a 504 plan.

II. Referral to Child Study Committee

The following guidelines shall be implemented in order to determine whether a student is eligible under Section 504.

- A. A referral may be submitted by parents, school or facility staff or outside professionals.
- B. The referral process should be initiated in response to any verbal, electronic or written request. The referring source should complete the Child Study Committee Referral form upon receipt of the request. A verbal referral may be transcribed to the form by the MHEP staff receiving the referral.
- C. A child study committee is convened according to the procedures outlined in Appendices A and B of this manual.

III. Referral to 504 Eligibility Team

- A. If the committee reviews the referral and determines the referral should be reviewed by the 504 Eligibility Team, the following occurs:
 - 1. A 504 Eligibility Meeting is scheduled. The parent must be notified of the meeting and encouraged to participate.
 - 2. The 504 Eligibility Team is composed of a group of individuals knowledgeable about the child and the meaning of the evaluation data.
 - 3. The parents are provided a copy of the 504 Procedural Safeguards.
 - 4. The 504 Eligibility Team:
 - a. Reviews existing data and considers 504 Eligibility
 - OR
 - b. Reviews existing data and determines that additional data is needed. Multiple sources of information should be considered by the 504 Eligibility Team.

IV. Evaluations and Reevaluations

If the team determines further evaluations are necessary the following guidelines should be adhered to during the evaluation process:

- A. A single procedure should not be used as the sole criterion to determine eligibility of the student. Section 504 does not require specific evaluation components. The 504 Eligibility Team, based on the needs of the individual student, will determine the evaluation process and/or components.
- B. Written consent must be obtained from the parent prior to any evaluation. Upon receipt of the signed consent to evaluate, the 504 Coordinator should initiate assessment procedures by asking qualified personnel to begin evaluations.

- C. While Section 504 does not mandate a specified timeline for completion of evaluations, the evaluation and eligibility process should generally be completed within 65 business days of the referral.
- D. As part of an initial evaluation (if appropriate) and a re-evaluation, the 504 Eligibility Team shall review existing evaluation data including evaluation and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and other professionals' observations, and may request one or more of the following written components if needed:
1. Medical
 2. Psychological
 3. Educational
 4. Socio-cultural
 5. Vocational
 6. Others as appropriate to the student's suspected disability
- E. Evaluators who conduct assessments must ensure that tests and other evaluation materials are:
1. not used in a culturally or racially discriminatory manner;
 2. provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so;
 3. validated for the purpose for which they are used;
 4. administered by trained personnel in conformance with the publisher's instruction.
- F. While Section 504 does not mandate a specific timeline for reviewing eligibility, MHEP recommends that eligibility be reviewed for each student every three years. A re-evaluation may be considered at any time. The triennial review should be prior to the third anniversary to give sufficient time for new evaluations to be conducted and/or new data to be collected if needed to determine eligibility.
- G. Tests and other evaluation materials include those tailored to assess specific areas of educational need, not merely those that are designed to provide a single general intelligence quotient. The

tests selected ensure that when administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect the student's aptitude or achievement level or whatever factors the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills (except where the tests focus on those skills).

V. Section 504 Eligibility Considerations

- A. The 504 Eligibility Meeting shall be composed of a group of individuals knowledgeable about the child and the meaning of the evaluation data. The parent must be notified of the meeting and encouraged to participate.
- B. The student must meet ALL THREE criteria to be eligible:
1. Physical or mental impairment
 - a. A physical impairment is a physiological condition, cosmetic, disfigurement or anatomical loss that affects one or more of the body systems, such as cardiovascular, muscular, skeletal, respiratory, or digestive.
 - b. A mental impairment is a mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness or specific learning disability.
 2. Substantially limits
 3. One or more major life activities
- C. To meet the criteria for eligibility under Section 504, an individual must have an impairment that SUBSTANTIALLY limits a major life activity an average person can perform with little or no difficulty. "Substantial limitation" means significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.
- D. If the team determines from the evidence the student has a physical or mental impairment – that limits a major life activity – the team must identify the impairment and major life activity and determine the extent to which the impairment limits the major life activity.
Examples of everyday activities:
- walking - seeing - learning - reading - communicating
- breathing - working - bending - hearing - caring for oneself
- E. The team must focus on the major life activity as a whole – not in a particular class or subject, or for a particular subject area. The team should use the average student in the general population as a frame of reference.

- F. The eligibility determination must be made without considering mitigating measures, which are those that help correct or ameliorate an individual's physical or mental condition. This includes, among other things, medication, low vision and hearing devices, use of assistive technology, and mobility devices. The use of ordinary eyeglasses or contact lenses is the only exception and may be considered in the determination of eligibility.
- G. The 504 Committee shall determine whether the student is a student with a impairment under Section 504 and, if so, develop a written plan describing what accommodations will be provided to meet the student's needs. The determination decision and, if applicable, education plan of the 504 Committee shall be submitted to the parent(s) in writing.
- H. If a 504 Eligibility Team determines at any time that a student does not meet criteria for eligibility, the 504 Plan is terminated upon this decision. Parent consent is not required for termination of a 504 Plan.

VI. Section 504 Individual Accommodation Plan

- A. A Section 504 Individual Accommodation Plan (504 Plan) is required for each student determined to have a disability by the 504 Eligibility Committee.
 - B. The 504 Plan should be completed within 30 calendar days of the determination of the Section 504 initial eligibility.
 - C. Prior to the initial 504 Plan meeting, a copy of the completed Eligibility for Section 504 form, Procedural Safeguards for Section 504, and meeting notification must be sent to the parent. Meeting notification should be sent to the parent(s) far enough before the scheduled 504 Plan meeting to allow the parent(s) reasonable time to prepare for the meeting or request the meeting be rescheduled. It is also recommended that phone contact be made.
 - D. The 504 Plan is reviewed annually at scheduled meeting. Meeting notification must be documented and sent to the parent(s) far enough in advance to allow the parent(s) reasonable time to prepare or request the meeting be rescheduled.
 - E. The 504 Plan meeting should include two of the following individuals and the parent if they choose to participate:
 1. Administrator/designee
 2. The student (when appropriate)
 3. Staff who have knowledge of the student
 4. A teacher of the student
- E. Accommodations
1. The 504 Plan team should only agree to accommodations directly related to the student's impairment that are needed by the student to provide equal access to the curriculum and instruction.

2. Accommodation must reflect specific areas in which a substantial limitation is documented and supported by evaluation data.
3. Accommodations should be clearly defined. Define the condition under which the accommodation is provided and how it is provided. Example: Instead of accommodation, “extended time”, the accommodation should be define more clearly, such as “up to 50% extended time for written assignment” or “1/3 additional time for tests/quizzes.”
4. Students with a Section 504 Individual Accommodation plan may qualify for accommodations on standardized tests. Any testing accommodation must be in compliance with state and local testing regulations and must reflect accommodations the student needs and receives on a regular basis to access the curriculum. Information on most recent information regarding accommodations is available on the Virginia Department of Education’s Web site.

VII. Procedural Safeguards for Section 504 (see Appendix E)

A copy of the following should be given to the parent(s) upon referral to 504 Eligibility.

In accordance with §504 of the Rehabilitation Act of 1973 as amended and the Americans with Disabilities Act (ADA) – Amendment Act of 2008 MHEP provides you with the following procedural safeguards in relation to your child:

1. *You have the right to receive a copy of this notice upon the school’s division’s identification, evaluation, refusal to provide an evaluation, educational placement, denial of educational placement of your child, and before any significant changes in your child’s placement.*
2. *You have the right to an opportunity to examine all relevant records for your child.*
3. *You have a right to an informal review of disagreements you may have with decisions regarding eligibility and/or accommodations for your student under Section 504. This informal review cannot be used for disagreements regarding discipline or manifestation determination decisions.*
4. *You have the right to file a grievance with MHEP over an alleged violation of the Section 504 or ADA regulations.*
5. *You have the right to an impartial hearing, with participation by you and representation by your counsel, for disputes concerning the identification, evaluation, or educational placement of your child.*
6. *You have the right to a review of an impartial hearing officer’s final decision if you disagree with that decision.*

VIII. Informal Review Procedure for Section 504 Disputes

- A. Parents or adult students who disagree with a Section 504 team decision regarding the identification, evaluation, or placement of a student with a disability may request an informal review of such decisions. An informal review may also be requested by a student's Section 504 team where clarification is needed regarding a matter related to Section 504. The informal review process cannot be used for disputes involving student discipline or manifestation determination reviews.
- B. A request for an informal review must be in writing and submitted to the MHEP administrator/designee.
- C. Upon receipt of a request for an informal review, the MHEP administrator/designee will consider the request and determine whether or not the matter should be reviewed. The decision of whether or not a request for an informal review should be granted is within the discretion of the MHEP administrator/designee.
- D. If the request for an informal review is granted, a review committee, which is comprised of the MHEP administrator/designee, a school psychologist, an instructional specialist, and any other persons deemed appropriate by the MHEP administrator/designee, will convene to discuss the concerns raised. In addition to the committee members, the parents, relevant school employees, and, where appropriate, the student will be invited to participate in the meeting.
- E. Following the meeting, the review committee will issue its written recommendations. The review committee's recommendations are non-binding in nature. If appropriate, a Section 504 team meeting will be held to consider the review committee's recommendations.
- F. The informal review process is voluntary and does not need to be exhausted before filing a grievance or requesting an impartial hearing. The informal review process is an additional informal dispute resolution process that may be used, but use of this process does not lengthen any expressed timelines for filing a grievance or requesting an impartial hearing.

IX. Section 504 Dispute Resolution Procedures

Persons who believe that the MHEP has discriminated against them because of their disability and thus violated the Section 504 regulations can file a written grievance with the compliance officer of the Local Education Agency (LEA) in which the MHEP is assigned. Procedures and policy of the assigned LEA will then be followed.

PROGRAM ADMINISTRATION

I. Reports

A. Virginia Department of Education

1. Annual Plan
2. Membership Report - July yearly
3. Monthly Attendance Reports
4. Budget Requests
5. Others as requested

B. Flow Through Part B

1. Grant Application
2. Reimbursement Requests
3. December 1 - SpedSys Report
4. End of Year Reports
5. Inventory of Part B Equipment
6. Amendment Requests
7. Others as requested

C. Inventories

Current inventories of materials and equipment must be maintained according to the source of funding. A copy is kept on file in the MHEP office and is available upon request.

II. Employment

A. Personnel Policies

All personnel employed by LEAs and assigned to MHEPs are responsible for adhering to all rules, regulations, and statutes pertaining to facility policies and to those of the LEA unless otherwise stated in this manual. MHEP employees are expected to abide by the specific rules and regulations of the facility relative to patient treatment, as outlined in the facility's personnel procedure manual. (Exception: During an investigation the education staff person may be temporarily reassigned to a position outside of the facility by the LEA and/or the Virginia Department of Education in lieu of suspension until the investigation is completed.)

B. Certification

Each LEA shall assign personnel to the education program as follows: administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements.)

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. Paraprofessionals must meet state certification requirements.

D. Contracts

The termination of a program or insufficient state funding for the education program in the mental health facility shall entitle the school division to terminate the contracts, including continuing contracts of teachers, supervisors, and administrative personnel. Contracts, including continuing contracts of teachers, educational consultants, supervisors, and administrative personnel in MHEPs shall be drawn in compliance with the laws of the Commonwealth of Virginia and requirements of the Virginia Board of Education, including any special provisions approved by the employing local school board.

D. Lesson Plans

All teachers are expected to have daily lesson plans. They should include but are not limited to curriculum objectives, activities, materials as they relate to the Standards of Learning (SOLs) and/or the IEP. Education Directors will regularly monitor lesson plans throughout the year to assure comparability to LEA curriculum and IEP implementation.

E. Use of substitutes

Consistency in treatment and delivery of educational services for students residing in mental health facilities are major objectives for MHEPs. In light of the nature of mental health settings, the various types of students' illnesses and the MHEP staff's familiarity with the programs and students, classroom coverage in cases of short-term absences and leaves will be handled by the MHEP staff. Education personnel shall follow their MHEP policy in regard to notification of absences /leaves. Substitutes will be used in cases of long-term (a week or more) absences/leaves or possible multiple absences within the school program. The use of substitutes in the above situations will be at the discretion of the MHEP administrator. Exceptions to this policy will be reviewed by the MHEP administrator and the Virginia Department of Education.

F. Reduction in force

Reduction in Force (RIF) policies are intended to provide fair and equitable procedures for dealing with mandatory requirements for reducing the school work force. The regulations attempt to protect the long term employment of all personnel who have been performing their duties in a satisfactory manner. Any displacement of personnel is considered a temporary circumstance to be alleviated as quickly as vacant positions become available. As contractual employees of the LEA, funded by the Virginia Department of Education, facility educational staff will not be subject to reduction in force without prior approval of the Virginia Department of Education.

Should the Virginia Department of Education need to exercise the RIF policy, the initiating agency will be responsible for notifying the other. Should a reduction in force occur, the LEA, Virginia Department of Education, and the administrator will work cooperatively to develop a mutually acceptable plan. Each MHEP maintains its own seniority list, exclusive of other State Operated Programs (SOPs) that may also be included within the same LEA.

G. Staff Development/In-service/Travel

For state operated programs (MHEP) personnel, this policy supersedes all local school division policies regarding attendance at in-services and conferences. Specific staff development opportunities may be mandated by the Education Director or the Virginia Department of Education.

Each MHEP is responsible for planning, implementing, and evaluating an ongoing in-service training/staff development program. MHEP staff is encouraged to participate in job-related professional programs and activities with prior approval that support the education program. Staff members are approved to attend in-services or conferences each year according to budget resources and supervisory approval. In some instances approval to attend a conference or in-service may be granted without full or partial financial obligation of the MHEP. It is the responsibility of any individual desiring to serve on a conference planning committee or submitting a proposal for a presentation to get approval from their MHEP education director prior to making commitments. Reimbursement for travel expenses will be made according to the LEA's travel policies. In all cases, no more than two conferences per year may be attended. Mandatory staff development conferences are not included in the two conference limit. In addition no more than two staff members from a facility may attend any one conference.

Exceptions are granted with DOE approval.

H. Student-Teacher Ratio

MHEPs maintain student-teacher ratios specified by state regulations for children with disabilities. In view of the severity of students served in MHEPs the Virginia Department of Education maintains ratios significantly below state regulations for students with and without disabilities. All staff whether providing instruction to a group or individual must maintain safety standards and practices including informing staff of students present and service location if other than assigned classroom.

I. Staff/Student Relationship

1. MHEP staff must maintain professional and therapeutic relationships with students at all times.
2. Approval from the Education Director must be obtained prior to engaging in school-related activities with students beyond contract hours. MHEP staff may not engage in non-school related activities with students beyond contract hours.
3. Individual MHEP staff are not allowed to give or receive gifts of material value from students and/or their families.
4. MHEP staff is prohibited from any form of money exchange with students.
5. The exchange of personal contact information with students, whether electronically or verbally is prohibited.
6. MHEP staff should not initiate communication with a student beyond contract hours or upon discharge. Communication from a student who has been discharged must be reported to the Education Director.
7. MHEP staff should refer students to the appropriate treatment team member for non-educational or treatment related inquiries.

J. Reporting Suspected Abuse, Neglect and Misconduct

In cases of observed or suspected physical abuse, neglect, and misconduct, the policies and procedures of the Local Education Agency (LEA) will be followed.

K. Universal Precautions

MHEP staff shall follow universal precautions as outlined by Occupational Safety and Health

Administration (OSHA), OSHA regulations, and facility standards. Training is required annually for all staff and documentation is forwarded to the appropriate person.