
Revised 2010

Parent's Guide to Special Education



*Virginia Department of Education
Division of Special Education and Student Services*

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INTRODUCTION

Parents play an important role in the education of their children, especially parents of children who are identified as having disabilities. The law requires that parents and school personnel work together to provide children with appropriate educational services. You, as a parent of a child with a disability, should ask questions and request help when you feel that you need it.

This parent's guide was developed by the Virginia Department of Education (VDOE) in order to help you understand your rights and responsibilities, your child's rights, and the school's responsibilities to meet the special needs of your child. This guide includes a description of the special education process and what is required of you and the school during each step of that process. Important timelines are highlighted in each section.

To help you further understand your legal rights, the school will give you a procedural safeguards document at certain times in the process. To keep you informed, the school will also give you notice of meetings and of its proposed or refused actions. You should know, however, that this guide is not intended to replace the procedural safeguards document or any notice, nor is it a substitute for the state's special education regulations.

You can find these regulations, the procedural safeguards notice, and this guide on the VDOE Web site (<http://www.doe.virginia.gov>). Copies are available at no cost from the VDOE at the address below. Braille copies, audio tapes, and large print versions are also available upon request.

The VDOE has a Parent Ombudsman who provides assistance and information on special education matters and coordinates VDOE's activities with Virginia's Parent Resource Centers located in many school divisions in Virginia. The location of the Centers may be found on the VDOE Web site at: <http://www.doe.virginia.gov>. You may call or write the VDOE parent Ombudsman at:

Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218-2120
1-800-422-2083 (voice)

You may also find information on special education and other education issues by referring to the VDOE Web site at <http://www.doe.virginia.gov> or the United States Department of Education Web site at <http://www.ed.gov>.

The toll free telephone number for the U.S. Department of Education is 1-800-USA-LEARN (1-800-872-5327).





UNDERSTANDING SPECIAL EDUCATION LAW

Brief History of State and Federal Law

Virginia has a history of funding and providing special education programs for children with disabilities. The first legislation in Virginia to require special education for certain children with disabilities was passed in 1968. In 1972, the General Assembly expanded this legislation to include all children with disabilities, ages 2 to 21, inclusive. During this time, Congress was studying the need for a national policy for the education of children with disabilities. In response to the study, the Education for All Handicapped Children Act of 1975 (Public Law 94-142) was signed into federal law. An amendment in 1990 changed the name of this law to the Individuals with Disabilities Education Act (IDEA). The 1997 amendments restructured IDEA. The most recent revision to IDEA occurred in 2004, and final regulations to guide states in implementing these changes were issued in October of 2006.

The current legal provisions regarding special education in Virginia, modeled after IDEA, are contained in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (effective July 7, 2009), 8 VAC 20-81-10 et seq., and the Code of Virginia.

Age 2 to 21, Inclusive

A child with a disability, age 2 to 21, inclusive, means one whose second birthday falls on or before September 30 and who has not become twenty-two years of age by September 30. If your child with a disability becomes 22 after September 30, he or she is eligible to receive services for that school year.

Law

Law means any state or federal law, regulation, or statute.

Free Appropriate Public Education

What are the purposes of special education laws?

IDEA and Virginia's special education laws require all schools to ensure that all identified children with disabilities have the right to a free appropriate public education (FAPE).

What is FAPE?

FAPE means special education and related services that:

- ◆ are provided at public expense, under public supervision and direction, and without charge;
- ◆ meet the standards of the Virginia Board of Education;
- ◆ include an appropriate preschool, elementary school, middle school, or secondary school education in the state; and
- ◆ are provided in keeping with an individualized education program (IEP).

School

School means a local public school division, a state-operated program (funded and administered by Virginia), or the Virginia School for the Deaf and the Blind at Staunton.

Where are these services provided?

Special education services may be provided in a general education or special education classroom, home, hospital, separate school, or other setting.

A surrogate may be used if the child is homeless or is in foster care if the child's parent cannot be identified or located. If a child who is homeless needs a surrogate parent, a staff member from an emergency or transitional shelter, an independent living program, or a street outreach program may serve as a temporary surrogate parent, even though the staff member is an employee of an agency involved in the care of a child. The temporary surrogate may only serve until a fully qualified surrogate parent can be appointed.

Surrogate Parent

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process. A surrogate parent is used only when no parent can be identified or when the school, after reasonable efforts, cannot locate the child's parents. The school must ensure that the surrogate parent has the following qualifications:

- ◆ *has no conflicts with the interests of the child;*
- ◆ *has knowledge and skills that ensure adequate representation of the child;*
- ◆ *is not an employee of the Department of Education or any other agency which is involved in the education or care of the child; and*
- ◆ *is an adult.*

Who qualifies as a parent?

Special education law defines parent as:

- ◆ biological or adoptive parent;
- ◆ guardian;
- ◆ person acting in place of a parent (such as a grandparent or stepparent with whom the child lives or a person legally responsible for the child's welfare);
- ◆ surrogate parent;
- ◆ foster parent, under specific circumstances; or
- ◆ either parent, unless there is evidence of a legally binding instrument, state law, or court order that has terminated a parent's parental rights.

An emancipated minor or validly married minor may also assume the responsibilities of a parent.

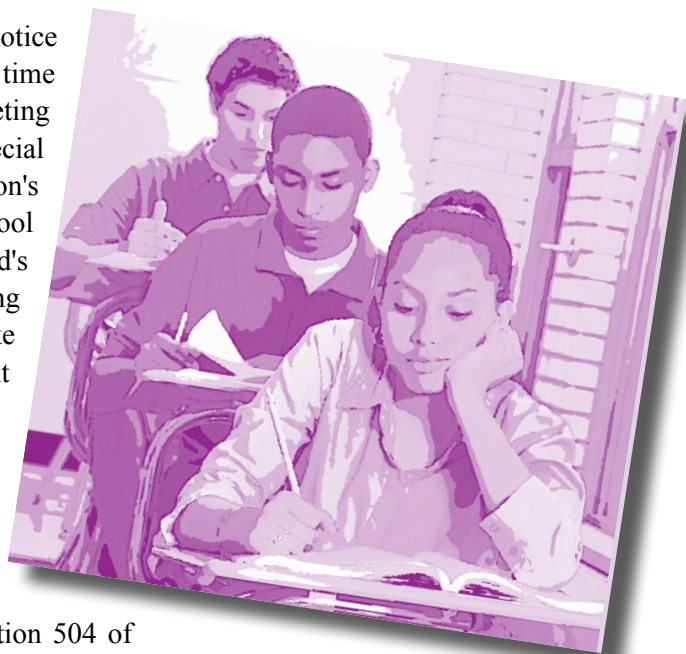
The term parent does not include a state or local agency, such as a social service agency, or one of its employees if the child is in the custody of such agency.

If more than one person meets the definition of a "parent," the school will rely upon the biological or adoptive parent to make decisions about the special education process as long as they are attempting to act as the parent (unless there is evidence that the person does not have the legal authority to make educational decisions for the child).

If a court order identifies a person to make educational decisions, the school will rely upon that person to make decisions about the special education process.

If your child is living with a foster parent, and your parental rights have not been terminated, your school division must send you a written notice that school personnel will rely on the foster parent to make decisions regarding your child's special education program. These decisions relate to matters regarding your child's IEP services and placement, as well as eligibility decisions.

The school division will send you this written notice in the beginning of the school year or at any time throughout the school year when there is a meeting related to your child's IEP or eligibility for special education and related services. The school division's notice remains in effect until you advise the school division that you will respond as your child's biological or adoptive parent in matters involving your child's special education program. Do make sure that the school division has your current mailing address and contact information.



What other law helps children with disabilities?

In addition to IDEA, another federal law gives rights to children with disabilities. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in any program or activity receiving federal funding, including education. More specifically, this law protects the rights of qualified persons with a disability of school age. The Section 504 regulations require schools that receive federal funds to provide a free appropriate public education to each qualified person, regardless of the nature and severity of his or her disability. For more information on this law, you may refer to the United States Department of Education Web site at <http://www.ed.gov/about/offices/list/ocr/index.html>.



UNDERSTANDING THE SPECIAL EDUCATION PROCESS

Overview

What is special education?

Special education means specially designed instruction to meet the unique needs of a child with a disability. It includes instruction conducted in a classroom, home, hospital, institution, or other setting, at no cost to you, the parent. It also includes instruction in physical education.

What does “at no cost to the parent” mean?

The term “at no cost to the parent” means that the school division pays for all specially designed instruction. However, a fee, such as an activity fee, which is charged to all children as part of the general educational program, may be charged to your child.

What is the special education process?

There are five steps in the special education process, and each step builds on the previous one.

- 1. Identification and referral.** When your child is suspected of having a disability, a referral, which is a written or oral request for an evaluation, is given to the school.
- 2. Evaluation.** The school then evaluates the child to determine whether your child has a disability as well as the nature and extent of the special education and related services that your child needs.
- 3. Determination of eligibility.** Based on the results of the evaluation, a team decides if your child is eligible to receive special education and related services. To be found eligible, the team must decide that the child has a disability and as a result needs special education and related services.

4. Development of an individualized education program (IEP) and determination of services. If your child is eligible to receive special education and related services, a team then develops and implements an appropriate IEP to meet the needs of your child. This team also decides the particular services the child will receive. The IEP must be reviewed and revised at least annually.

5. Reevaluation. At least every three years, a team must reevaluate your child to determine whether your child continues to need special education and related services, unless you and the school agree that a reevaluation is not necessary.

This guide gives detailed explanations of these five steps in the following sections.

Through this five-step process, all relevant and comprehensive information is gathered and considered by a group of people, including you, within certain timelines and with certain procedural safeguards. Timelines help to prevent any delay. Procedural safeguards, which are rights given to you as a parent of a child with a disability, ensure that your child is provided a free appropriate public education (FAPE). Your involvement in each step of the process is important and encouraged.

Identification of Children with Disabilities

What is the school's responsibility in identifying children who have disabilities?

Schools must conduct Child Find. That is, schools must locate, identify, and evaluate those children in Virginia, regardless of citizenship or immigration status, who need special education and related services, including children who are:

- ◆ enrolled in public (including charter), private, or religious elementary or secondary schools;
- ◆ highly mobile, such as migrant and homeless children;
- ◆ receiving homebound or home-based instruction from the school;
- ◆ receiving home tutoring, or home instruction (“home-schooling”);
- ◆ advancing from grade to grade;
- ◆ under 18 and incarcerated in a regional or local jail for 10 or more days or under house arrest;
- ◆ suspended or expelled;
- ◆ in foster care; or
- ◆ placed in a private residential placement by a Comprehensive Services Act (CSA) team. For more information on the CSA, refer to the Web site at <http://www.csa.state.va.us>.

Home-based instruction is instruction provided in the home when the IEP team decides the least restrictive environment for the child is the home. The location may be another location besides the home if agreed to by the school and the parents.

Homebound instruction is instruction provided when the child is confined in a home or health-care facility for a period that would prevent normal school attendance and when a doctor or psychologist certifies that the child needs to be confined. Homebound instruction is provided to both children with disabilities and children without disabilities.

Home instruction or home-schooling is instruction of the child by the parents as an alternative to attendance in a public or private school and must be approved by the division superintendent. Home instruction is provided to both children with disabilities and children without disabilities.

Home tutoring is instruction by a tutor or teacher as an alternative to attendance in a public or private school and must be approved by the division superintendent. Home tutoring is provided to both children with disabilities and children without disabilities.

Child Find

How does the school conduct screening?

Screening is part of the identification process. You will receive a general notice about the screening and will be notified if your child fails the screening. Your school will conduct screenings based on its local procedures, which will include timelines. Screenings must be done in the areas of speech, voice, language, and fine and gross motor functions. Your school will also either provide information about scoliosis or do regular screenings of students in grades five through 10 for scoliosis. The vision and hearing for all children in grades three, seven, and 10, must be screened within 60 days of the beginning of the school year.

The purpose of these screenings is to determine if a referral for an evaluation for special education and related services is indicated.

In some cases when a child fails a screening, the school may not suspect a disability. A referral may be made to a team established by your child's school to review your child's records and to make recommendations regarding your child's educational and behavioral needs.



TIMELINE

The vision and hearing for all children must be screened within 60 days of the start of the school year in grades three, seven, and 10. School divisions must have procedures that include a timeline for completing additional screenings to determine if a referral for an evaluation for special education and related services is indicated.

What happens if the screening suggests a disability?

If the results of the screening suggest that your child should be evaluated for special education and related services:

- ◆ your child will be referred to the special education administrator or designee;
- ◆ you will be notified; and
- ◆ the school will maintain screening information in a confidential manner.

Special Education Administrator/Designee

Your school division's special education administrator or the administrator's designee (a person chosen by the administrator to act in the administrator's place).

Business, Calendar, and School Days

Special education timelines are counted in either business or calendar days.

Business days means Monday through Friday, 12 months of the year, not counting federal and state holidays, with the exception of the notice requirement for placing your child in private school. State and federal holidays are posted on the VDOE Web site at <http://www.doe.virginia.gov>.

Calendar days mean consecutive days, including Saturdays and Sundays. Whenever any period of time ends on a Saturday, Sunday, federal or state holiday, the period of time is extended to the next day that is not a Saturday, Sunday, or federal or state holiday.

Timelines for suspensions are counted in school days.

School day means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children.

School-Based Team

What happens if the school-based team suspects a disability?

If the school-based team suspects a disability, it must refer your child to the special education administrator within three business days.



TIMELINE

The school-based review team must meet within 10 business days following the team's receipt of the referral. The team must refer your child to the special education administrator within 3 business days if it suspects that your child has a disability.



TIMELINE

The school-based team must meet within 10 business days following the team's receipt of the referral.

School-Based Team

Each school establishes a school-based team to process referral requests for children suspected of having a disability. School personnel, you, or another person may refer a child to this team. For children who are referred, the team will review the child's education records and information about the child's performance and make recommendations for meeting the child's educational and behavioral needs.

In reviewing your child's performance, the school-based team may use a process based on your child's response to scientific and research-based interventions. The team will ensure that these interventions are documented, and that the use of these interventions do not unnecessarily delay your child's evaluation for special education. If your child does not make appropriate progress using these interventions, the team will refer your child to the special education administrator for an evaluation to determine if your child needs special education and related services.

The school-based team has a general education function and may have another name, such as "teacher assistance team" or "instructional support team." As a member of the committee, the building principal or designee (a person chosen by the principal to act in the principal's place) receives all referrals to the team.

The team includes the following people:

- ◆ *the person who referred your child (except where it would breach the confidentiality of your child);*
- ◆ *the principal or designee;*
- ◆ *at least one teacher;*
- ◆ *at least one specialist; and*
- ◆ *at least one person with knowledge of alternative interventions and the procedures required to access programs and services for children.*

Other people may also be included on the team if your school determines that your child's needs require people with specialized training, or if your school division's procedures require that additional people be included.

The team may make a referral for evaluation for special education and related services at any time. This may be prior to or while implementing these strategies. Any action by the team must be in writing and must include the information on which the decision is based.

Individual Referral

What should I do if I think my child has a disability or needs special education?

You, a teacher, another person, or the school-based team (referring source) may request an evaluation at any time by writing or by speaking to the special education administrator. Although you are not required to put your request in writing, a written request documents your referral and starts the timeline. The referring source must explain the reasons that an evaluation is requested and any efforts that have been made to address the concerns.

What happens after a request for an evaluation?

When the referral is received, the special education administrator must:

- ◆ record the date, reason for referral, and name of the person or agency making the referral;
- ◆ ensure confidentiality; and
- ◆ provide you with prior written notice and a procedural safeguards notice.

Within three business days, the special education administrator must decide whether to evaluate your child, request a review by the school-based team, or to deny the request.

If the special education administrator refers the evaluation request to the school-based team, within 10 business days of its receipt of the referral, the team must decide whether to evaluate. The referral to the school-based team, however, does not increase the number of days for conducting an evaluation; rather, the team's work is part of the time period set by law of 65 business days from the date the special education administrator receives the referral to the date of the eligibility decision.



TIMELINE

The special education administrator may request a review by the school-based team; this request must be made within 3 business days of the special education administrator's receipt of the referral. Within 10 business days of its receipt of the referral from the special education administrator, the school-based team must decide whether to evaluate.

After the special education administrator receives the referral for evaluation, eligibility for special education and related services must be determined within 65 business days, unless the parent and the eligibility group agree in writing to extend the 65 business day timeline to obtain additional data that cannot be obtained during the initial 65 business days.

Evaluation

What happens if the school decides to evaluate?

If the decision is to evaluate, the special education administrator must:

- ◆ give you all notices of the evaluation process, give you a copy of the procedural safeguards, inform you of the procedures for the evaluation process, involve you in deciding what evaluation information is needed, and request any evaluation information that you may have;

- ◆ include you as a member of the team reviewing evaluation data and deciding whether more information is needed;
- ◆ get your written consent to conduct an evaluation; and
- ◆ ensure that all evaluations are completed and that a decision about eligibility for special education is made within 65 business days after the referral for evaluation is received by the special education administrator. This timeline does not apply if:
 - ◆ you repeatedly fail or refuse to make your child available to be evaluated; or
 - ◆ your child transfers to a new school division during the evaluation process. This exception only applies if the new school division is making sufficient progress to complete the evaluation process and you and the new school division agree to a specific date when the evaluation process will be completed.

If you do not give consent, the school may use due process procedures or mediation procedures to conduct the evaluation. Your consent is not required, however, before reviewing existing information, administering an assessment that is administered to all children without parental consent, or screening your child to determine the most appropriate instructional strategies to use with your child.

If your child is home-instructed or home-tutored, or if you place your child in a private school placement at your own expense, you may choose to not provide your consent for your child to be evaluated. However, if you do not give your consent for the evaluation, or if you fail to respond to a request for your consent to evaluate your child, the school may not use the due process or mediation procedures to conduct the evaluation.

What happens if the school decides not to evaluate?

If the decision is not to evaluate, you must be given:

- ◆ a written notice (“prior written notice”) of the decision;
- ◆ a full explanation of the reasons for the decision not to evaluate; and
- ◆ an explanation of procedural safeguards, including your right to challenge the decision through an opportunity to request mediation and/or a due process hearing.

Individual Evaluation

What is an individual evaluation?

An individual evaluation means procedures used to determine whether your child has a disability and what are your child's educational needs, and if so, the nature and extent of the special education and related services that he or she needs. When a child is referred, the school conducts an evaluation according to specific procedures required by law and ensures:

- ◆ prior written notice in your native language or mode of communication, unless it is not feasible;
- ◆ notice of procedural safeguards;

Medication Requirements

Your school division may not require that your child take prescription medication as a condition of your child attending school, receiving an evaluation, or receiving special education and related services. However, your child's teachers may share with you their observations of your child's academic and functional performance, your child's behavior in the classroom or at school, or your child's need for an evaluation for special education or related services.

- ◆ written parental consent;
- ◆ an opportunity for a due process hearing;
- ◆ confidentiality;
- ◆ an opportunity for examination of records; and
- ◆ nondiscriminatory testing.

The first step of the individual evaluation is the determination of needed evaluation data.

Who decides what information is needed for the evaluation?

The decisions are made by a group that includes:

- ◆ you;
- ◆ at least one of your child’s general education teachers if your child is in general education classes or a general education teacher if your child may participate in general education in the future;
- ◆ at least one special education teacher or related services provider (this person must be serving your child if your child is participating in special education);
- ◆ a person from the school who is qualified to provide or supervise the provision of special education and who knows about the general education curriculum and available resources (this person may be another member of the team);
- ◆ a person who can interpret what the tests mean for your child’s education (this person also may be another member of the team, other than you or your child);
- ◆ other people who are invited at your or the school’s discretion and who have knowledge or special expertise about your child (the person inviting another individual makes the decision that the invited individual has knowledge or special expertise about your child);
- ◆ your child, if appropriate; and
- ◆ other qualified professionals, as appropriate.

You must consent to sharing educational information about your child with a person not employed by the school before the person’s participation in the meeting.

What happens in a meeting to decide what evaluation data to obtain?

The group will begin by reviewing information that the school already has about your child, including classroom test scores and observations by teachers. In addition, the school will ask you for any evaluations, observations, or other information that you want to present.

This information reviewed by the group members will help them decide:

- ◆ whether your child has a particular disability;
- ◆ your child’s current educational and behavioral needs;
- ◆ how your child is doing in school;
- ◆ whether your child needs special education and related services; and
- ◆ what your child needs to meet the IEP goals.

Native Language/Mode of Communication

Native language is the language you speak, and the mode of communication is the type of communication you understand, such as sign language, Braille, or oral communication. When providing information to your child or assessing your child, native language or mode of communication refers to the language or type of communication your child understands and uses.

The group members will decide whether there is enough information to make these decisions. If the group finds that more information is needed, it will identify the additional information and get your consent to evaluate. If, however, the group members decide that there is enough information, then the group's review will be considered an evaluation.

How can I be involved?

The group needs your presence, participation, and permission in the evaluation process. For example, if the group reviews the information without a meeting, you must be given an opportunity to participate in the review. If a meeting is scheduled, the school must give you reasonable written notice of the purpose, date, time, and location of the meeting as well as a list of those who plan to attend.

What requirements are followed in evaluating my child?

The following provisions are required by law to ensure the quality of the information collected:

- ◆ Tests and other evaluation materials must be provided and administered in your child's native language and in the form most likely to provide accurate information about what your child knows and can do academically, developmentally, or functionally, unless it is not feasible.
- ◆ If your child has limited English proficiency (or uses a language other than English), materials and procedures used in the testing must be selected and administered to ensure that they measure the extent to which your child has a disability and needs special education, rather than measuring his or her English language skills.
- ◆ A variety of tests or strategies must be used to gather information about your child, including functional, academic, and developmental information about your child.
- ◆ Any standardized tests must be validated for the specific purpose for which they are used. They also must be administered by trained personnel according to the instructions provided by the producer of the tests.
- ◆ If a test is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.
- ◆ Any nonstandardized test administered by qualified personnel may be used by the group.
- ◆ Tests must measure specific areas of educational need and not merely those that provide your child's intelligence score.
- ◆ Tests must take into consideration any impaired sensory (for example, vision or hearing), motor, or communication skills so that these impairments do not negatively affect the test results.
- ◆ The evaluation must be broad enough to identify all of your child's special education needs and related services even if those needs are not commonly linked to the suspected disability.
- ◆ The tests and other evaluation materials must provide information that will assist the group in determining your child's educational needs.
- ◆ The tests must determine the impact of cognitive, behavioral, physical, and developmental factors.
- ◆ No single test may be used by itself to determine if your child has a disability, or to determine your child's educational program.

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- ◆ If the evaluation process requires that the child be tested in more than one area, a group of people, including a teacher or specialist with knowledge in your child's suspected area of disability, shall do the testing.
 - ◆ If the team suspects a specific learning disability, the evaluation must include an observation in the general education classroom by at least one group member other than your child's regular teacher.

In addition, a written copy of the evaluation report must be made available to you at least two business days before the eligibility meeting. The special education administrator should let you know where and when you can get a copy of the reports. A written copy of the evaluation reports must be provided to you at no cost at the eligibility meeting or immediately following the meeting but no later than 10 days after the eligibility meeting.



TIMELINE

A written copy of the evaluation report must be made available to you at least 2 business days before the eligibility meeting. A written copy of the evaluation reports must be provided to you at the eligibility meeting or immediately following the meeting, but no later than 10 days after the eligibility meeting.

What tests will my child have?

Your child must be tested by qualified personnel in all areas related to the suspected disability. These may include, if appropriate:

- ◆ health;
- ◆ vision;
- ◆ hearing;
- ◆ social and emotional status;
- ◆ general intelligence;
- ◆ academic performance;
- ◆ communicative status;
- ◆ motor abilities; and
- ◆ adaptive behavior.

Qualified personnel means persons who hold the required license from VDOE or other appropriate state or national agency.

In addition, during the first evaluation, the hearing of your child must be screened. If your child fails two hearing screening tests or is deaf or hearing impaired, the school must complete an audiological test.

What will happen if my child moves to a new school division during the evaluation process?

The two school divisions, your child's previous school division and your child's new school division, will work together to complete the evaluation process as quickly as possible. The evaluation process must be completed within 65 business days of the date that the special education administrator in your child's previous school division received the request for your child to be evaluated, unless:

- ◆ Your child's new school is making sufficient progress to complete the evaluation process; and
- ◆ You and your child's new school agree to a specific date when the evaluation process will be completed.

Reevaluation

When will my child be reevaluated?

At least every three years, the school must reevaluate your child, unless you and the school agree that the reevaluation is not needed. This kind of reevaluation is often called a “triennial.” Your child may be reevaluated more often if you or the teacher requests it or if conditions justify a reevaluation to determine whether your child is still a child with a disability or to determine your child's educational needs. However, a school may not conduct a reevaluation more than once a year, unless you and the school agree otherwise.

What happens in a reevaluation?

The reevaluation is similar to the initial evaluation in terms of the process and your involvement. As noted in the section on individual evaluations, the decisions are made by the same group, which includes you.

This group begins by looking at the information already available about your child. This review may be conducted with or without a meeting. More information is collected only if it is needed. If the group decides that additional assessments are needed, parents must give written permission before the school can collect that information.

If the group decides that no additional assessments are needed, the school must inform you. If you think an additional assessment is needed to determine eligibility or your child's educational needs, you must make your request for these specific purposes for the school to conduct the assessment.

The school may go ahead without your informed written permission only if it has tried to get your permission and you did not respond.

When will my child's reevaluation begin?

When the reevaluation is conducted as part of a triennial, the reevaluation process, including the decision about whether your child continues to be a child with a disability, must begin in enough time for the process to be completed before the third anniversary of the date on which your child was last determined eligible. However, if the reevaluation is completed for any other reason, the process, including the eligibility determination, must be completed within 65 business days from the date the special education administrator receives the request.

You and the eligibility group may agree in writing to extend the 65 business day timeline to obtain information that cannot be obtained within the 65 business days.



TIMELINE

A triennial reevaluation must begin in enough time for the process to be completed before the third anniversary of the date on which your child was last determined eligible. A reevaluation for any other reason must be completed within 65 business days from the date the special education administrator receives the request.

You and the eligibility group may agree in writing to extend the 65 business day timeline for the completion of the reevaluation to obtain information that cannot be obtained within the 65 business days.

Independent Educational Evaluation (IEE)

What happens if I disagree with the evaluation?

If you disagree with a test given during your child's evaluation process, you have the right to have an independent educational evaluation (IEE) conducted by a qualified person who does not work for the school. You may request one IEE for each test given to your child during the current evaluation process. The school may ask, but not require, you to explain your objection to the school's evaluation of your child.

Upon your request for an IEE, the school division must provide you with information about available sources for obtaining an independent evaluation and about the school's requirements for that evaluation. The IEE must be obtained under the same requirements, including the location of the evaluation and the qualifications of the examiner, as the school uses for its evaluations. The school may not require additional conditions or timelines, nor may it unnecessarily delay providing for an IEE.

You also may request that the school pay the cost of the IEE. However, the school may ask for a due process hearing to show that its evaluation is appropriate. If the hearing officer decides that the school's evaluation is appropriate, then you still have the right to an IEE, but the school does not have to pay for it.

In addition, the results of the IEE, and any evaluations you obtain at private expense that are shared with the school division, will be considered in any decision about your child's special education and may be presented as evidence at a due process hearing by you or the school division.

Eligibility

How is the decision about my child's eligibility made?

Once the evaluations are completed, a decision is made to determine whether your child is or continues to be a child with a disability and in need of special education and related services. The group that makes this decision may be the IEP team or an eligibility group and must include:

- ◆ you;
- ◆ the special education administrator;
- ◆ school personnel from disciplines providing the assessments;

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- ◆ a special education teacher;
 - ◆ your child’s general education teacher (or, if your child does not have a general education teacher, a general education teacher qualified to teach a child of your child's age); and
 - ◆ a person qualified to conduct diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or teacher of remedial reading.

The eligibility group must be qualified to:

- ◆ conduct appropriate individual diagnostic assessments for children;
- ◆ interpret and analyze the information from the assessments; and
- ◆ develop educational and transitional recommendations.

In making its decision, the eligibility group will determine your child's educational needs. To do this, the group must ensure that your child has been observed in his or her learning environment to document how your child is learning and behaving in school. This observation might have been conducted before the referral for evaluation. If not, a member of your child's eligibility group might conduct an observation in your child's general education classroom after your child has been referred for evaluation. If your child is not in school, an eligibility group member must observe your child in an environment that is appropriate for your child's age group.

If your school uses a process to determine your child's response to scientific, research-based interventions, the eligibility group will consider information from this process to determine whether your child is a child with a disability.

Who is a child with a disability?

A child with a disability is eligible for special education and related services. This term includes a child who is evaluated and determined to have:

- ◆ autism;
- ◆ deafness;
- ◆ deaf-blindness;
- ◆ developmental delay (if your school division allows the use of this category);
- ◆ emotional disability;
- ◆ hearing impairment, including deafness;
- ◆ intellectual disability;
- ◆ multiple disabilities;
- ◆ orthopedic impairment;
- ◆ other health impairment;
- ◆ specific learning disability;
- ◆ speech or language impairment;
- ◆ traumatic brain injury; or
- ◆ visual impairment, including blindness.



Definitions of these disability categories are included in the glossary of this guide.

For your child to be found eligible as a child with one of these disabilities, your child must meet the specific criteria adopted by the Virginia Department of Education, and your child's disability must affect his or her educational performance. In other words, the disability must cause your child to need special education and related services.

Criteria for these disability categories are included in Virginia's special education regulations, which are available on the VDOE Web site at <http://www.doe.virginia.gov/VDOE/Instruction/Sped/varegs.pdf>.

What are related services?

Related services means developmental, corrective, or supportive services required for a child with a disability to benefit from special education, including:

- ◆ counseling services, including rehabilitation counseling;
- ◆ early identification and assessment;
- ◆ interpreting;
- ◆ medical services required for diagnostic and evaluation purposes;
- ◆ orientation and mobility services;
- ◆ parent counseling and training;
- ◆ physical and occupational therapy;
- ◆ psychological services;
- ◆ recreation, including therapeutic recreation;
- ◆ school health services and school nurse services;
- ◆ social work services in schools;
- ◆ speech-language pathology and audiology services; and
- ◆ transportation.



The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, or dance therapy) if they are required for a child with a disability to benefit from special education.

Related services do not include medical devices that are surgically implanted, such as cochlear implants. Related services also do not include the maintenance or replacement of such devices; however, school personnel must ensure that the exterior parts of such devices are functioning properly.

Definitions of these related services are included in the glossary of this guide.

How does my child become eligible to receive related services?

A child who is eligible for special education is then eligible for related services. The related service must be necessary for the child with a disability to benefit from the special education. A child may not be eligible for related services if he or she is not already eligible for special education. The type and amount of related services a child needs is determined by the IEP team.

What happens during the eligibility meeting?

In determining eligibility, the group will look at the evaluation results and information from a variety of sources and consider if your child received high-quality researched-based instruction from qualified teachers. The group will also work toward consensus (agreement) between the members. A member of the group who cannot agree shall give reasons in a separate statement.

The school will get your consent for the eligibility determination. It also will give you copies of the evaluation reports and documentation of the eligibility group's decision at no cost. The documentation must include information about:

- ◆ whether your child has a specific disability, including whether your child meets the criteria for a disability category;
- ◆ the reasons for the decision;
- ◆ any behavior that affects your child's learning; and
- ◆ any medical issues that affect your child's learning.

If your child has participated in a process to determine your child's response to scientific, research-based interventions, the documentation must also include information about:

- ◆ the Virginia Department of Education's policies about the amount and nature of student performance data collected;
- ◆ the strategies used to increase your child's rate of learning; and
- ◆ your right to request an evaluation.

Your child also may not be found eligible if the reason your child meets the eligibility criteria is because your child either:

- ◆ has not had appropriate instruction in mathematics or reading; or
- ◆ uses a language other than English.

What happens if my child is found eligible for special education and related services?

If your child is found eligible for special education, the group must forward a summary statement to the IEP team. From this point, no changes can be made to your child's eligibility without consent from you.

What happens if my child is not found eligible for special education and related services?

If your child is not found eligible for special education, the school will give you written notice about its decision. Important information relating to your child's education will be provided to his or her teachers or any appropriate committee, such as the instructional support team or school-based team. If your child attends a private school outside your school division, the school will get your consent to share this information with the private school.



TIMELINE

Eligibility for special education and related services must be determined within 65 business days after the special education administrator receives the referral for evaluation, unless the parent and the eligibility group agree in writing to extend the 65 business day timeline to obtain additional data that cannot be obtained during the initial 65 business days.

Previous Enrollment in Special Education

When a child with a disability transfers from a public school in Virginia or another state, what responsibility does the new school have?

When a child with a disability transfers to a public school in Virginia from another public school either in Virginia or another state, the new school still has the responsibility for ensuring the availability of a free appropriate public education (FAPE) to the transferring child.

If your child has been receiving special education from a public school either in Virginia or another state, and then transfers to another public school in Virginia, the new Virginia public school must consult with you and ensure that your child receives services comparable to what your child received in the previous school, until it either:

- ◆ adopts and uses the existing IEP of the previous school with your consent; or
- ◆ conducts an evaluation, if it determines one is necessary, and develops and implements a new IEP for your child with your consent.

The new school may provide interim services with your consent while obtaining and reviewing information necessary to develop a new IEP for your child. However, if you and the new school cannot agree on interim services or a new IEP, you or the school may ask for mediation or a due process hearing to resolve the disagreement. In the meantime, the new school must consult with you to provide your child with a free appropriate public education, which includes providing services comparable to those described in your child's previous IEP.

The new school must take reasonable steps to obtain your child's records from the previous school. However, if the new school is unable to obtain your child's IEP from the previous school or from you, the new school is not required to provide special education and related services for your child, but must place your child in a general education program. The new school may conduct an evaluation of your child if it determines one is necessary.

If the new school decides that it is necessary to evaluate your child, the new school must:

- ◆ give you notice of its decision and the evaluation process;
- ◆ conduct an evaluation with your consent;
- ◆ determine if your child continues to be eligible for special education and related services; and
- ◆ develop an IEP.

During the evaluation period, your child will receive those services in your child's most recent IEP, excluding sections of the IEP that are inconsistent with the law.

Once the evaluation is complete and eligibility is decided, an IEP must be developed no later than 30 calendar days after the date eligibility was decided.



TIMELINE

An IEP must be developed no later than 30 calendar days after the new school completes its evaluation and determines your child's eligibility.

Termination of Special Education and Related Services

When do special education and related services end?

Before special education and related services for your child are discontinued, the school must evaluate your child. As noted in the section on individual evaluations, this evaluation may be a review of information already available. However, no evaluation is needed if your child:

- ◆ graduates with a standard or advanced studies high school diploma; or
- ◆ reaches his or her twenty-second birthday.

You must be provided notice that special education and related services will end when your child graduates with a standard or advanced studies high school diploma.

The decision to discontinue special education and related services may also occur during an IEP meeting or eligibility meeting when:

- ◆ following an evaluation, the team decides that your child is no longer a child with a disability who needs special education and related services; and
- ◆ you give your consent in writing.

The school will give you notice of this decision.

The IEP team may discontinue a related service for your child without deciding that your child is no longer eligible for special education and related services, as long as you give your written consent. The school will give you notice of this decision.

What happens if I change my mind about my child receiving special education and related services?

If you change your mind, or withdraw your consent in writing, for your child to continue to receive special education and related services, the school must stop providing special education and related services of any kind for your child. You will receive a written notice from the school about this action. Your child would no longer be protected by discipline procedures for children with disabilities. Your child would not be eligible for a Modified Standard Diploma, and would have to meet all requirements for a regular (standard or advanced studies) diploma. The school cannot take any action to require that your child continue to receive special education and related services.

Your action to withdraw your consent is not retroactive, so it cannot undo any action that has already taken place.

Diplomas and Eligibility

Graduation with a standard or advanced studies diploma concludes a child's eligibility for special education and related services.

Graduation with a modified standard diploma, special diploma, certificate of completion, or General Educational Development (GED) certificate does not conclude a child's eligibility.

Individualized Education Program (IEP)

After my child has been found eligible for special education, what is the next step?

When your child is first found eligible, a meeting must be held within 30 calendar days to develop an individualized education program (IEP). If your child was previously eligible for special education and related services, after a reevaluation, a meeting to develop a new IEP for your child must be held within 30 calendar days if:

- ◆ you request an IEP meeting; or
- ◆ if your child's IEP team decides that changes are needed to your child's IEP.



TIMELINE

The IEP must be developed within 30 calendar days of the initial determination of eligibility, and within 30 calendar days after a reevaluation is completed if you request an IEP meeting or your child's IEP team decides that changes are needed to your child's IEP.

What is an IEP?

An IEP is a written statement designed to meet your child's unique needs and must be in effect:

- ◆ at the beginning of each school year;
- ◆ before special education and related services are provided for your child; and
- ◆ as soon as possible after you consent to the IEP.

Who develops my child's IEP?

The IEP team for each child with a disability includes:

- ◆ you;
- ◆ at least one of your child's general education teachers if your child is or may be participating in general classes;
- ◆ at least one special education teacher or related service provider of your child (this person must be serving your child if your child is participating in special education; if your child's only disability is speech-language impairment, the special education provider must be the speech-language pathologist);
- ◆ a person from the school who is qualified to provide or supervise the provision of special education and knows about the general curriculum and about available resources (this person may be another member of the team);
- ◆ a person who can interpret what the tests mean for your child (this person also may be another member of the team, other than you or your child);
- ◆ other people who are invited at your or the school's discretion and who have knowledge or special expertise about your child, including related services personnel, as appropriate

General Education Teacher

If your child is or may be participating in the general education environment, the IEP team must include the general education teacher, who will, to the extent appropriate, participate in the development, review, and revision of the IEP. This teacher also will help in decisions about:

- ◆ *appropriate positive behavioral interventions and strategies for your child; and*
- ◆ *supplementary aids and services, accommodations, program modifications, or supports for school personnel that will be provided for the child.*

If your child has more than one general education teacher, the school may decide which teacher or teachers will serve as IEP team member(s), taking into account the best interests of your child. However, if not all of your child's general education teachers are members of the IEP team, the school may ask for input from the teachers who will not be attending. In some cases, the general education teacher on the team may not be present for the entire meeting.

(the person inviting another individual makes the decision that the invited individual has knowledge or special expertise about your child); and

- ◆ your child, if appropriate.

The school will decide who from the school will fill these roles. If one of these members of your child's IEP team cannot attend the meeting, it must be rescheduled, unless:

- ◆ the required member's specialty area will not be discussed at the meeting, and you and the school agree, in writing, that the IEP team member does not need to attend; or
- ◆ you consent in writing to the IEP team member being excused because before the meeting, the member has provided written input into the development of your child's IEP.

You must consent to sharing educational information about your child with a person not employed by the school before that person may participate in the meeting.

There may be other participants:

- ◆ If the meeting concerns secondary transition services for your child, then the school must invite him or her and with your consent, someone from any agency that is likely to be responsible for providing or paying for the transition services. If either your child or the agency is not able to attend the meeting, the school will take steps to include them when planning secondary transition services.
- ◆ If any accommodations or modifications are written into the IEP for your child to participate in transportation, someone from transportation may be invited or consulted before the IEP is written.
- ◆ If your preschool child has been served under Part C, but will now receive services from your local school, the school shall, at the parent's request, invite the Part C service coordinator to attend your child's first IEP meeting.

Working together, the team will develop your child's IEP.

How often will my child's IEP be reviewed?

The IEP team will meet at least once a year to review and revise your child's IEP. The IEP team addresses:

- ◆ progress or lack of progress toward your child's annual goals;
- ◆ the results of any reevaluation;
- ◆ information provided to or by you;
- ◆ your child's anticipated needs; or
- ◆ other matters.

You may request that your child's IEP be reviewed at any time. If you and the school decide that changes to your child's IEP are needed between the annual reviews of the IEP, you and the school may agree not to hold a meeting to make the changes. However, if changes are made:

- ◆ all member of your child's IEP team must be told of the changes; and
- ◆ if you request it, you may receive a copy of your child's revised IEP at no cost.

If your child's IEP is revised without holding a meeting, those changes do not substitute for the IEP team's annual review of your child's IEP.

How am I involved in the development of my child's IEP?

To ensure that you have an opportunity to attend the IEP meeting, the school will notify you of the meeting in advance and will schedule the meeting at a time and place agreed on by both you and the school. The notice may be in writing, by telephone, or in person and must give the purpose, date, time, and location of the meeting as well as a list of those who plan to attend. The school must also inform you that you and the school may invite any individual who has knowledge or special expertise about your child.

In order to help develop an appropriate IEP for your child, you are encouraged to attend and to bring information and ideas to the meeting.

What happens if I cannot or do not attend the IEP meeting?

If you cannot attend, the school will use other methods to encourage your participation, including individual or conference telephone calls. The meeting may be held without you as long as the school has a record of telephone calls, letters, or visits made or attempted in order to encourage your attendance.

What happens in an IEP meeting?

The school also must ensure that you understand what is discussed at the meeting, including providing an interpreter for you if you are deaf or do not speak English.

At the IEP meeting, the IEP team must give you a written description of the factors the team must consider, including:

- ◆ the strengths of your child and your concerns about your child's education;
- ◆ the results of the first or most recent evaluation of your child;
- ◆ your child's academic, developmental, and functional needs;
- ◆ behavior intervention strategies and supports if your child's behavior interferes with learning;
- ◆ your child's language needs if he or she uses a language other than English;
- ◆ instruction in Braille and the use of Braille, unless inappropriate, if your child is blind or visually impaired;
- ◆ the communication needs of your child;
- ◆ your child's need for benchmarks and short-term objectives;
- ◆ your child's language and communication needs if he or she is deaf or hard of hearing; and
- ◆ any need for assistive technology devices and services.

The school must provide you a copy of your child's IEP at no cost at the IEP meeting, or within a reasonable period of time after the IEP meeting, not longer than 10 calendar days.

Notice for Secondary Transition Planning

Whenever the purpose of an IEP meeting is to discuss your child's secondary transition planning or postsecondary goals, the school will invite your child to attend the meeting.

The IEP meeting notice must:

- ◆ *state that the purpose of the meeting is the consideration of needed transition services;*
- ◆ *state that the school will invite your child; and*
- ◆ *if you have provided consent for the invitation, identify any other agency that will be invited to send a representative.*

You must consent to sharing educational information about your child with a person not employed by the school before the person's participation in the meeting.



TIMELINE

A copy of your child's IEP must be provided at the IEP meeting, or within a reasonable period of time, not longer than 10 calendar days.

What additional factors under FAPE does the IEP team consider?

In addition, the IEP team must consider all factors involved in providing a free appropriate public education (FAPE) for your child, including:

- ◆ **Assistive technology (AT).** The school will ensure that AT devices or services, or both, are made available if required as part of your child's special education, related services, or supplementary aids or services. On a case-by-case basis, the use of school-purchased or leased AT devices in the child's home or other setting are required if your child's IEP team decides that your child needs access to those devices in order to receive FAPE.
- ◆ **Charter schools.** A child with a disability who attends a public charter school must be served in the same manner as a child with a disability in other public schools.
- ◆ **Disability Harassment.** The school will ensure that your child is not harassed because of his or her disability.
- ◆ **Extended school year (ESY) services.** ESY services consist of special education and related services provided:
 - beyond the normal school year or after school;
 - according to your child's IEP;
 - at no cost to you; and
 - according to state standards.

For further information on extended school year services, contact the VDOE to request a copy of the "Extended School Year Services Technical Assistance Resource Document," revised December 2007, or refer to it on the VDOE Web site.



- ◆ **Hearing aids and certain other assistive technology devices.** The school will ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. The school will do routine checks to ensure that your child's hearing aids, or the external parts of any surgically implanted device that your child has, are functioning properly. However, the school is not responsible for the maintenance, programming, or replacement of any surgically-implanted medical device.
- ◆ **Length of school day.** The school day of your school-age child will be comparable to that of a school-age child without a disability unless his or her IEP specifies otherwise. The IEP team will determine the length of the school day for a preschool child with a disability.

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- ◆ **Nonacademic and extracurricular services and activities.** The school will take steps, such as providing the supplementary aids and services determined necessary by your child's IEP team, to provide your child an equal opportunity for participating in such services and activities as counseling, athletics, transportation, health, recreation, school-sponsored groups or clubs, referrals to agencies, and student employment.
 - ◆ **Physical education (PE).** The school will provide the opportunity to participate in general PE unless:
 - the school division enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade;
 - your child is enrolled full time in a separate facility (where appropriate PE services will be provided); or
 - your child needs special instruction that cannot be provided in the general PE program. If so, the school will provide the special PE services directly or will arrange for those services to be provided through other public or private programs.
 - ◆ **Program options.** The school will ensure that your child has the same variety of educational programs and services available to a child without a disability, including art, music, industrial arts, consumer and homemaking education, and vocational education. Your child's placements and services must be based on your child's needs and not your child's disability.
 - ◆ **Residential placement.** If placement in a public or private residential program is necessary to provide special education and related services to your child, the program, including nonmedical care and room and board, must be provided at no cost to you.
 - ◆ **Transportation.** If your child is placed in an education program by the school, transportation to and from the program is provided at no cost to you if:
 - such transportation is necessary for your child to benefit from educational programs and opportunities, including private special education day or residential placements; or
 - the school has an agreement with another school to provide services.

Children with and without disabilities will share the same transportation unless your child's IEP requires specialized transportation. The school must ensure that your child is provided a commute to and from education programs and opportunities that is comparable in length to the commute provided to children without disabilities, unless your child's IEP team decides that a longer or shorter commute is necessary to ensure your child receives a free appropriate public education.

What type of information is included in an IEP?

The IEP will include specific statements about the following information:

- ◆ **Present levels of academic achievement and functional performance.** This statement, written in objective measurable terms, when possible, describes:

- how your school-age child’s disability affects his or her involvement and progress in the general curriculum;
- how the disability affects your preschool child’s participation in appropriate activities; and
- what other educational needs result from the disability.

Any test scores, if not easy to understand, should be explained.

General Curriculum

General curriculum means the same curriculum used with children without disabilities adopted by the school for all children from preschool through high school. The term relates to content of the curriculum and not to the place where the curriculum is taught.

- ◆ **Measurable annual goals.** The IEP must state measurable annual goals, including academic and functional goals for your child, meaning what the team believes he or she reasonably can accomplish in a year. This statement of annual goals may include individual steps (sometimes called short-term objectives) or major milestones (sometimes called benchmarks). If your child's IEP provides that your child will participate in alternative assessments that reflect alternative achievement standards, the IEP must include benchmarks or short-term objectives. Otherwise, the IEP team must document that the team considered including benchmarks or short-term objectives in your child's IEP. The goals must relate to meeting the needs that result from your child’s disability. They also must help your child to be involved and progress in the general curriculum.

Participating Agencies Financially or Legally Responsible for Providing Transition Services

Participating agencies are agencies that are financially or legally responsible for providing secondary transition services. They may include:

- ◆ Department of Rehabilitative Services;
- ◆ Community Services Board;
- ◆ Department of Social Services;
- ◆ Health Department; or
- ◆ Employment Commission.

- ◆ **Measuring progress.** The IEP must state:
 - how your child’s progress toward the annual goals will be measured; and
 - when you will receive periodic reports on your child's progress toward meeting his or her annual goals. You may be informed of your child's progress through the use of quarterly or other periodic reports as long as you receive reports of your child's progress at least as often as parents receive progress reports for children without disabilities.
- ◆ **Participation in state and divisionwide assessments.** The IEP must include a statement explaining:
 - any accommodations or modifications for the state or divisionwide tests;
 - reasons for your child’s nonparticipation in the state or divisionwide tests;
 - how your child’s nonparticipation in these tests will affect his or her promotion, graduation with a modified standard or advanced studies diploma, or other matters; and
 - how your child will be assessed in each area of nonparticipation, and why the particular alternate assessment is appropriate for your child.
- ◆ **Special education and related services to be provided.** This statement also includes changes to the program or supports for school personnel that will be provided for your child to:
 - advance appropriately toward attaining the annual goals;

- be involved and progress in the general curriculum; and
- participate with other children with disabilities and children without disabilities in the general curriculum as well as extracurricular and nonacademic activities.

◆ **Dates and location.** The IEP must state:

- what month, day, and year the services and modifications will start;
- how often they will be provided;
- where they will be provided; and
- how long they will last.

◆ **Nonparticipation with children without disabilities.** The IEP must include an explanation about the extent of your child’s nonparticipation in general education classes and activities.

◆ **Secondary transition services.** Before your child enters secondary school, but no later than the first IEP to be in effect when your child reaches age 14 (or younger, if the IEP team decides that it is appropriate), your child's IEP must include:

- post-secondary goals, appropriate to your child's age, which are measurable and based on age-appropriate assessments. The goals should relate to training, education, employment, and if appropriate, your child's independent living skills; and
- transition services, including courses of study, which your child needs to reach his or her goals. These services must be based on your child's needs and take into account your child's strengths, preferences, and interests. These services must also include activities such as instruction, related services, and community experiences.

Beginning no later than the first IEP to be in effect when your child turns 16 (or younger, if the IEP team decides that it is appropriate) your child's IEP must also include a statement of interagency responsibilities and linkages. If a participating agency does not provide the transition services described in your child's IEP, the school will call a meeting of the IEP team to identify other ways to meet the transition goals.

If your child is pursuing a modified standard diploma, the IEP team must consider his or her need for occupational readiness at graduation. Specifically, the team may consider courses to prepare your child for completing a career and technical education program.

◆ **Rights at age of majority.** At least one year before your child reaches the age of majority (18), the IEP must include a statement that you and your child have been informed of the rights that will transfer from you to your child at age 18. You may, however, continue to make educational decisions for your adult child through either guardianship procedures, a power of attorney, or certification. For more information on the transfer of rights, you may refer to “Transfer of Rights for Students with Disabilities Upon Reaching the Age of Majority in Virginia” on the VDOE Web site at http://www.doe.virginia.gov/VDOE/Instruction/Sped/transfer_rights.pdf.

Summary of Academic Achievement and Functional Performance

If your child graduates with a standard or advanced studies diploma, or if your child reaches the age of 22, your child's school must provide your child with a summary of academic achievement and functional performance. In the summary, the school must make recommendations to assist your child as your child tries to achieve his or her goals after high school.

If your child leaves school before he or she is 22, or before receiving a standard or advanced studies diploma, the school may provide the summary to your child when your child leaves. However, if after receiving the summary, your child returns to school to continue receiving special education and related services, the school must provide your child with an updated summary when your child leaves school again.

How will my child participate in the Standards of Learning (SOL) assessments?

All students with disabilities must first be considered for participation in the Virginia Standards of Learning (SOL) assessments. Your child's IEP must specify your child's participation in Virginia's state accountability system, whether in the SOL assessments (with or without accommodations) or one of Virginia's alternate assessment programs (the VAAP, VGLA, or VSEP).

In order to take an alternate assessment, your child must meet the specific criteria for participation in the particular assessment.

In deciding whether your child needs accommodations or modifications for the SOL assessments, the IEP team should use the accommodations and modifications adopted by the Virginia Board of Education. However, only the accommodations and modifications included in your child's IEP may be selected. For more information on these accommodations and modifications, you may refer to the VDOE Web site.

How are IEP decisions made?

Based on the factors considered at the meeting, the IEP team will work toward consensus (agreement) in writing your child's IEP. Because the IEP cannot be implemented without your consent, the team, if in disagreement, must continue to work toward consensus. Any existing IEP is implemented until a new IEP is written with your consent.

What happens after the IEP is developed?

The school must implement your child's IEP, as it is written, and for which you provided your consent. The school must also ensure that your child's IEP is available to all of your child's teachers and service providers, and to other school personnel who may be responsible for implementing your child's IEP. Your child's teachers and service providers must be told of their specific responsibilities for implementing the IEP and about the IEP's content.

Participation of Students with Disabilities in Virginia's Accountability System

Standards of Learning (SOL) set expectations for teaching and learning. They are statements of knowledge and skills that all children are expected to learn and use in solving day-to-day problems and in becoming productive citizens. Student learning is measured through the Standards of Learning assessments in grades three through eight and for certain courses in high school.

The Virginia Alternate Assessment Program (VAAP) is designed to evaluate the performance of students with significant cognitive disabilities. It is available to children in grades three through eight and grade 11 for students working on academic standards in reading, mathematics, science, and history/social science.

The Virginia Grade Level Alternative (VGLA) Assessment is designed to serve students whose nature and level of disability prevents them from participating in a SOL test, even with accommodations. It is available for students with disabilities in grades three through eight in reading, mathematics, science, and history/social science. The VGLA may serve those students with disabilities whose testing accommodations fall outside those permitted for the SOL assessments.

The Virginia Substitute Evaluation Program (VSEP) is also designed to serve students whose nature and level of disability prevents them from participating in a SOL test, even with accommodations. It is available for students as a grade-level alternative assessment for SOL end-of-course tests, and for students in grades 9 through 12 who must earn the literacy and numeracy certification required for the Modified Standard Diploma.

You may find additional information about these assessments at the VDOE Web site.

Are the IEP requirements different for students in correctional facilities?

For eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities, the same IEP requirements apply with the following exceptions:

- ◆ A representative from a state, regional, or local adult or juvenile correctional facility may be on the IEP team.
- ◆ The requirement that the child be educated in the least restrictive environment does not apply.

For a student with a disability who is convicted as an adult and in an adult prison, the following exceptions also apply:

- ◆ The IEP team may change the IEP or services if the correctional facility convinces the team that an IEP provision or service poses a risk to the student or others.
- ◆ The requirements regarding the student's participation in state assessments do not apply, unless the student plans to graduate with a modified standard, standard, or advanced studies diploma.
- ◆ IEP requirements regarding transition planning and services do not apply for students whose eligibility will end before their release from the facility.

Administration of Education in Correctional Facilities

Those responsible for education in Virginia's correctional facilities include:

Department of Correctional Education, which administers education programs in both state adult (under the Department of Corrections) and state juvenile (under the Department of Juvenile Justice) facilities;

Local school divisions, which administer education programs in their regional or local adult jails; and

Virginia Board of Education, which administers education programs in regional or local juvenile detention facilities through a contract with the school division.

Placement

How is placement decided?

The placement decision determines where your child's special education instruction will occur. This decision is made by the IEP team, including you, each year and is based on your child's IEP. If your child is placed in a private special education facility, a Comprehensive Services Act (CSA) team, including you, may meet to discuss the child's placement.

The IEP team must consider placement closest to your child's home. Your child must be educated in the school that he or she would attend if not disabled unless the IEP indicates that another school is appropriate. When making its placement decision, the IEP team must consider the least restrictive environment (LRE) for your child.

Comprehensive Services Act (CSA)

CSA is a state law that establishes local multi-agency teams that meet to develop plans (Individual Family Services Plans) to address the needs of certain children and youths in the community. For more information you may refer to the CSA Web site (<http://www.csa.state.va.us>).

What does least restrictive environment (LRE) mean?

LRE means that children with disabilities are educated with children without disabilities to the maximum extent appropriate. Your child must not be placed in special classes or separate schools unless education in general education classes with aids and services cannot be achieved satisfactorily. Similarly, your child must be able to participate with children without disabilities, to the maximum extent appropriate, in nonacademic activities such as meals and recess, or other

extracurricular activities. If the IEP team determines that your child needs aids and services to help him or her to participate in these activities, the school must make those available.

In selecting the LRE, consideration is given to any potential harmful effect on your child or on the quality of the services that he or she needs. Your child may not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

What is the school division's responsibility in the placement of my child?

Each school division must provide a wide variety, or continuum, of alternative placements so that each child with a disability will have an appropriate program. This continuum includes:

- ◆ general education classes;
- ◆ special education classes;
- ◆ special education schools;
- ◆ home-based instruction, if required by the IEP, or homebound instruction when
 - instruction is made available to children who are confined for periods that would prevent normal school attendance; and
 - based on certification of need by a licensed physician or clinical psychologist; and
- ◆ instruction in hospitals and institutions, including state facilities.

This continuum of alternative placements also:

- ◆ must provide for supplementary services, such as a resource room or services or itinerant instruction, provided with general education classes;
- ◆ must include integrated service delivery, which occurs when some or all goals of your child's IEP are met in general education classes with similar-age children;
- ◆ must be based on the individual needs of your child, not a single model used for a specific population or category of children with disabilities;
- ◆ must be documented by the identification of each alternative considered and the reasons for the placement chosen; and
- ◆ must provide for a program, if appropriate, with similar-age children.

If my child is placed at the Virginia School for the Deaf and the Blind at Staunton (the Virginia School), what is the role of the placing school division?

If your child is placed at the Virginia School, the school division that placed the child will have responsibility for complying with the special education laws. For residential students, the Virginia School is responsible for transportation. For day students, the placing school division is responsible for transportation to and from school.

What are the staffing requirements for school divisions?

Virginia special education law sets certain staffing requirements for schools. When children with disabilities are removed from general classes for special education and related services, they may receive services with children with the same or different disabilities. Likewise, eligible preschool-aged children may receive services together with other preschool-aged children with the same or different disabilities. Each child must receive special education services from personnel who are

appropriately licensed. For information about the licensure requirements, please refer to Virginia's "Licensure Regulations for School Personnel," which are on VDOE's Web site at <http://www.doe.virginia.gov/VDOE/Compliance/TeacherED/nulicvr.pdf>. Qualification requirements for interpreters are found in the Appendix of this handbook.

Special education teachers who are teachers of record are required to be "highly qualified." General education personnel who are knowledgeable about students and their special education may provide special education services in collaboration with special education personnel.

The maximum special education caseloads are listed in the Appendix and depend on whether your child receives "Level I" services or "Level 2" services. Level I or II is based on the amount of time your child receives special education or related services.

If children with disabilities in a single building receive academic content area instruction from more than one special education teacher, the teachers' caseloads are determined by a building average as explained in the Appendix. In addition, when special education personnel are assigned to children without disabilities (as long as the personnel are qualified for those assignments) or to administrative duties, their caseloads are reduced proportionately. There is no caseload change, however, when services are provided in a general education class and other children benefit from the special education teacher's instruction.

In school divisions and private special education schools for all children with disabilities, alternative staffing plans must receive approval from the Department of Education. The Department of Education may grant approval for alternative staffing levels if these schools are seeking to implement innovative programs.

Highly Qualified

To be highly qualified, the teacher must meet Virginia's certification and licensing requirements and hold at least a bachelor's degree. There may be additional requirements depending on the course the teacher is teaching.

Private School Placement - By IEP or CSA Team

Under what circumstances can a school place my child in a private special education school?

An IEP team or a CSA team may decide to place your child for educational reasons in a private school or facility that is licensed or has a certificate to operate from the VDOE. If such a placement occurs, the placing school division must provide special education and related services as described in your child's IEP, including participation in state and divisionwide assessments, at no cost to you. Your child has the same rights and protections in this placement as he or she would have in public school.

Before placement, the placing school division must conduct a meeting to develop an IEP for your child with the participation of a representative from the private school. After your child enters the private school, the placing school division may allow the private school to hold meetings to review or revise his or her IEP. However, the private school must ensure participation by you and by a representative from the placing school division in any decision affecting the IEP.

The CSA team can place your child in a private school or facility for noneducational reasons. In that case, the school division on that CSA team is responsible for revising the IEP, as necessary, to reflect this non-educational placement.

Private School Placement - By Parents When There Is No Disagreement

What happens if I want to put my child in a private school or home-school him or her?

You may at any time place your child in a private school or home-school your child at your own expense. The school division is not required to pay for the cost of educating your child if the school division made FAPE available to your child prior to your decision.



Each school division must locate, identify, and evaluate children who have been placed in a private school, or who are being home-schooled or home-tutored within the school division. The school division must use activities similar to those which are used with students with disabilities in public schools and complete those activities within a similar time period. The school division must also work with representatives of private schools, home-schools, and parents regarding how to best complete these child find activities.

Private school and home-school children with disabilities are served as follows:

- ◆ these children do not have a right to receive some or all of the special education and related services that public school children would receive;
- ◆ each school division must develop a plan for how it will serve these children according to a funding formula and after timely and meaningful consultation with representatives from private schools, home-schools and parents of private schooled, home-schooled, and home-tutored children;
- ◆ decisions about the services that will be provided, including location of services, are made by the school division according to its plan. However, if the school division disagrees with the views shared by the parents and private school representatives during the consultation process about which services should be provided, the school division must provide those representatives with a written explanation of the reasons for its decision;
- ◆ the school division will develop and carry out a services plan for these children, and ensure that a representative from the private school has the opportunity to participate in the plan's development; and
- ◆ the school division may be required to provide transportation to and from the location where the services will be provided if that location is not the private school.

To be eligible to receive services under a service plan, the child with a disability must:

- ◆ be attending a nonprofit elementary, secondary, or home school located within the school division, or be home-tutored within the school division; and
- ◆ need the service(s) that the school division has agreed to provide to these children.

If my child is enrolled in a private school or is home-schooled, what rights do I have?

You have the right to request a due process hearing regarding child find procedures. You also may file a written complaint if you believe the school division violated the law regarding the provision of services to your private school child.

You have the right to refuse to have your child evaluated or reevaluated to determine if your child is, or continues to be, eligible for special education and related services. However, if you refuse to consent to the evaluation, or reevaluation, your child may not receive services under a services plan.

A private school official has the right to file a complaint with the VDOE if the school division does not have timely and meaningful consultation with representatives from the private schools, home-schools and parents of private schooled and home-schooled children, or if the school division did not appropriately consider the views of the private school official.

Home instruction

Home instruction (home-schooling) means instruction of a child by a parent or guardian as an alternative to attendance in a public or private school.

To home-school your child, you must:

- ◆ *obtain the approval of the school division superintendent; and*
- ◆ *comply with VDOE requirements and the Code of Virginia.*

For more information on home-schooling, you may refer to the VDOE Web site at <http://www.doe.virginia.gov/VDOE/Parents/home-instruction-faq.pdf>

Private School Placement - By Parents When There Is Disagreement

What happens if I disagree with the school over the availability of FAPE?

When disagreements arise regarding the availability of an appropriate program and the cost for providing it, you and the school may settle the dispute through mediation or a due process hearing. The due process hearing officer may order the school to reimburse you for the full amount of placing your child in a private school if the hearing officer finds that:

- ◆ the school did not make FAPE available to your child in a timely manner; and
- ◆ the private placement is the appropriate placement for your child.

A hearing officer may reduce or deny your request for reimbursement unless you inform the IEP team at the most recent meeting that you are rejecting the placement proposed by the school, and state your concerns and your intent to enroll your child in a private school at public expense or you give notice of this information to the school at least 10 business days before you remove your child from the public school. A hearing officer may also reduce or deny the full reimbursement if you did not make your child available for evaluation or if you acted unreasonably.

The reimbursement cannot be reduced or denied, however, under the following conditions:

- ◆ the parent is illiterate or cannot write in English;
- ◆ informing the school as required would result in harm to your child;
- ◆ the school prevented you from providing notice; or
- ◆ you did not receive information about this notice requirement.



UNDERSTANDING PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

The law provides procedural safeguards, which are legal rights and protections given to you and your child. Several of the following terms and concepts are used throughout the special education process.

Prior Written Notice

The school must provide you notice that explains in writing:

- ◆ the school's proposal or refusal to act; and
- ◆ your rights.

You must receive this notice before the school implements whatever it proposes or refuses to do.

The school must give this notice on matters involving the identification, evaluation, or placement of your child or the provision of FAPE to your child.

What information is in prior written notice?

The notice must include:

- ◆ a description of the action proposed or refused by the school;
- ◆ an explanation of the school's proposal or refusal to take the action;
- ◆ a description of any other options the school considered and the reason(s) for rejecting those options;
- ◆ a description of other factors important to the school's proposal or refusal;
- ◆ a description of each evaluation procedure, test, record, or report the school used as a basis for the action;
- ◆ a statement that you as a parent of a child with a disability have protection under the procedural safeguards;

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- ◆ information on how to get a copy of the procedural safeguards (if it is not included); and
 - ◆ sources for you to contact in order to get help in understanding the content of the notice.

Will I be able to understand the information in the notice?

The notice must be written in language understandable to the general public. In addition, it must be provided in your native language or other mode of communication used by you unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the school must take steps to ensure that:

- ◆ the notice is translated orally or by other means to you in your native language or other mode of communication; and
- ◆ you understand the content of the notice.

Procedural Safeguards Notice

Another type of notice is the procedural safeguards notice, which provides an explanation of your legal rights.

When will I be given a procedural safeguards notice?

A copy of the procedural safeguards notice must be given only one time a school year, except that a copy must be provided to you at the following times:

- ◆ if you request a copy;
- ◆ at your child's initial referral or your request for an evaluation;
- ◆ the school's receipt of the first request for a due process hearing in a school year;
- ◆ the school's receipt of the first state complaint in a school year; and
- ◆ if a decision is made to change your child's placement through a disciplinary removal because your child violated the school's code of student conduct.

The school division may post a copy of this notice to its Web site; however, the school division still must provide you a copy of the procedural safeguards notice, as required.

What information is in the procedural safeguards notice?

The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to:

- ◆ independent educational evaluations;
- ◆ prior written notice;
- ◆ parental consent;
- ◆ your access to your child's school records;
- ◆ opportunities to present and resolve a complaint;
- ◆ the difference between due process and complaint procedures;
- ◆ your child's placement during a due process hearing;
- ◆ procedures for students who are subject to placement in an interim alternative educational setting as a result of disciplinary action;

- ◆ requirements for your unilateral placement of your child in a private school at public expense;
- ◆ the availability of mediation;
- ◆ due process hearings, including requirements for disclosure of evaluation results and recommendations;
- ◆ civil actions, including the time period to file an action;
- ◆ attorneys' fees; and
- ◆ state complaint procedures, including timelines and a description of how to file a complaint with the VDOE.

You may find a copy of this notice, "Your Family's Special Education Rights; Virginia's Procedural Safeguards Notice," on the VDOE Web site. Translations in some foreign languages are available from the VDOE.

May I receive the procedural safeguards notice by e-mail?

If your school makes the option available, you may choose to receive prior written notice, the procedural safeguards notice, and notice of a request for a due process hearing by e-mail.

Parental Participation in the Special Education Process

You must be provided an opportunity to participate in meetings concerning your child's special education identification, evaluation, and educational placement and the provision of FAPE to him or her. Therefore, the school must provide notice of a meeting early enough to ensure that you have an opportunity to participate. Examples of these meetings include eligibility determinations and IEP meetings.

The school also must ensure that you understand what is discussed at the meetings about your child's placement, including providing an interpreter for you if you are deaf or do not speak English.

What does not qualify as a meeting?

Informal or unscheduled conversations between school personnel about such topics as teaching methods, lesson plans, preparation for a future meeting, or coordination of services are not considered "meetings." Therefore, notice is not required.

May I audio record the IEP meeting?

Special education law allows the use of audio recording devices at meetings to determine a child's eligibility, to develop, review, or revise a child's IEP, and to review discipline matters.

Notice of a Meeting

Notice of a meeting must include the purpose, date, time, and location of the meeting as well as a list of those who plan to attend. The names of school personnel attending the meeting do not need to be included on the notice. Only the personnel's position or role must be included. The school also will inform you that you, as well as the school, may invite other individuals to participate in the meeting who have knowledge or special expertise regarding your child. The person inviting another individual decides whether that individual has knowledge or special expertise. If your preschool child has been served under Part C, but will now receive services from your local school, the school must inform you that you may request that someone from the Part C program attend your child's first IEP meeting.

- ◆ You must inform the school before the meeting in writing if you plan to record the meeting with a tape recorder. If you do not inform the school, you must provide a copy of the audio recording to be included in your child's school record.
- ◆ You must provide your own tape recorder and other recording supplies.
- ◆ If the school records the meeting or receives a copy from you, the audio recording is included in your child's school record.
- ◆ The school may have policies that prohibit, limit, or otherwise restrict the use of audio recording at meetings other than those to determine a child's eligibility, to develop, review, or revise a child's IEP, and to review discipline matters.

May I video record the IEP meeting?

A school may permit, bar, or limit video recording of the IEP meeting or other meetings. If permitted, any video recording becomes a part of your child's school record. If the school bars or limits video recording, the school's policy must be uniformly applied. The school, however, must allow for exceptions if necessary for you to understand the IEP or the IEP process or to exercise your rights.

Consent

Consent means that:

- ◆ you have been given all the information you need in order to make a decision;
- ◆ you have been given this information in your native language or other mode of communication;
- ◆ you understand and agree in writing to the activity proposed by the school;
- ◆ your decision is voluntary and may be changed; and
- ◆ the given information describes the activity proposed by the school and lists the records, if any, that will be released and to whom they will be released.

Agree

Agree means that:

- ◆ you and the school have reached an understanding about something; and
- ◆ the understanding may be in writing.

Parental Consent

When does the school need my permission?

Giving permission, or written consent, is voluntary on your part and may be withdrawn at any time.

However, you must give written consent before the school can:

- ◆ conduct any evaluations which would be used to qualify your child for special education;
- ◆ change the identification of your child;
- ◆ place your child for the first time in a program providing special education and related services;
- ◆ change your child's IEP or placement, including any partial or complete ending of special education or related services;
- ◆ release information from your child's school record to nonschool personnel;
- ◆ access your child's Medicaid or other insurance benefits; or
- ◆ invite someone to an IEP meeting from a participating agency that is likely to provide or pay for secondary transition services.

Your consent is not required before:

- ◆ the review of existing data to be used as part of an evaluation or a reevaluation;
- ◆ the administration of a test or other evaluation that is administered to all children unless consent is required of parents of all children;
- ◆ the screening of your child to determine appropriate instructional strategies to use with your child;

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- ◆ the administration of a test used to measure progress on your child’s goals if included in the IEP;
 - ◆ a teacher’s or related service provider’s observations or ongoing classroom evaluations;
 - ◆ the graduation of your child with a standard or advanced studies diploma; or
 - ◆ a reevaluation if you fail to respond to a request for reevaluation and if the school can show that it has made reasonable attempts to get your consent.

What happens if I do not give my permission for an evaluation?

If you refuse consent for an initial evaluation or a reevaluation, the school may use mediation or due process hearing procedures to pursue the evaluation, but is not required to do so. However, in the case of a reevaluation, consent is not necessary if the school can show that it made reasonable attempts to get your consent and you did not respond.

What happens if I do not give my permission for my child to receive services?

The school must have your consent before providing your child special education and related services. If you refuse to give your consent for the initial provision of these services, or if you fail to respond to the school's request for your consent, the school may not use mediation or request due process to be able to provide the services to your child. The school is not required to conduct an IEP meeting or to develop an IEP for your child to inform you about the services that your child might receive if you provide consent.

What happens if I change my mind?

If you change your mind and revoke your consent for your child to receive special education and related services, you must do so in writing. If you do, the school must stop providing special education and related services to your child. You will receive a written notice from the school about this action, but the school cannot take any action to require that your child continue to receive services. In addition, the following changes will occur:

- ◆ The school will not be required to conduct any new IEP meetings for your child or to develop an IEP for your child.
- ◆ The school will not conduct a triennial evaluation.
- ◆ Your child will be required to meet all requirements for a general (standard or advanced studies) diploma.
- ◆ Your child would no longer be protected by the discipline procedures for children with disabilities.
- ◆ If you wish to have your child considered for special education at a later time, the school would treat the request as an initial evaluation.

If you change your mind, or withdraw your consent, your action is not retroactive. Therefore, withdrawing consent cannot undo any action that already has taken place. Withdrawing consent does, however, prevent action in the future.

Confidentiality of School Records

Are my child's records confidential?

The law protects the confidentiality of your child's school records.

There are three issues relating to confidentiality:

- ◆ access to your child's records;
- ◆ amendment (change) of your child's records; and
- ◆ use of personally identifiable information.

When may I have access to my child's records?

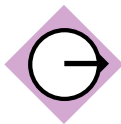
The school must permit you to inspect and review any school records that relate to your child and that are collected, maintained, or used by the school. Further, the school must respond without unnecessary delay, but not more than 45 calendar days after the request is made.

The school must promptly respond to your request before any meeting regarding an IEP or any due process hearing or resolution meeting involving your child.

With respect to access of records, you have the following rights:

- ◆ to get a list of the types and locations of school records collected, maintained, or used by the school;
- ◆ to inspect and review records unless the school has been advised that you have no authority under Virginia law governing such matters as guardianship, separation, and divorce;
- ◆ to inspect and review only information relating to your child if any record contains information on more than one child;
- ◆ to have someone you choose to inspect and review the records;
- ◆ to have reasonable requests of school personnel for explanations and interpretations of the records; and
- ◆ to request that the school provide copies of the records containing the information.

The school may charge a copying fee but must provide copies of records at no cost if you cannot review them at school. No fee for researching or getting information will be charged. No fee for providing you with a copy of your child's IEP will be charged.



TIMELINE

The school must respond to your request for access to your child's school records without unnecessary delay but within 45 calendar days of receipt of the request and sooner if the request involves an IEP meeting, resolution meeting or a due process hearing.

What do I do if I want my child's records changed?

You have the right to request that the school change, or amend, your child's records if you believe the information in your child's records:

- ◆ is inaccurate or misleading; or
- ◆ violates your child's right to privacy or other rights.

School Records

School records, as defined in the Family Educational Rights and Privacy Act of 1974 (FERPA), means records that are:

- ◆ *directly related to your child; and*
- ◆ *maintained by the school or its designee (a person chosen to act for the school).*

For additional information on FERPA, you may refer to the U.S. Department of Education Web site (<http://www.ed.gov/policy/gen/guid/fpco/index.html>).

The school must then decide within a reasonable period of time whether to change the information as requested. If the school decides not to change the record, it must inform you of the decision and of your right to a due process hearing conducted by a hearing officer.

If the hearing officer decides in your favor, the school must change the information accordingly and inform you of the change in writing. If, however, the hearing officer does not decide in your favor, then the school must inform you that you have the right to place a statement commenting on the information or setting out any reasons for disagreeing with the decision in your child's record.

What is personally identifiable information?

Personally identifiable information means information that includes the following:

- ◆ the name of your child, you, or other family member;
- ◆ the address of your child;
- ◆ a personally identifying number, such as a telephone number or social security number; and
- ◆ a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Except for disclosure to law enforcement and judicial authorities under specific conditions, the school must get your consent before personally identifiable information is:

- ◆ disclosed to anyone other than officials of the school who collect, maintain, or use this information; and
- ◆ used for any purpose other than meeting a requirement in the provision of a free appropriate public education (FAPE) for your child.

Discipline of Students with Disabilities

If my child breaks a school rule, what can the school do?

The school is required to inform you and your child of the local student conduct requirements. Contact your school for a copy of the conduct requirements. In some cases, when a child with a disability breaks a rule, the school must follow extra procedures before the child is disciplined.

There are two types of disciplinary actions the school may take when a child has broken a school rule: short-term removal (10 school days or less) and long-term removal (more than 10 school days). School personnel may consider any unique circumstances when deciding how to discipline your child.

What are the school's responsibilities to address my child's behavior?

If your child's behavior limits his or her ability to learn, or the ability of other students to learn, your child's IEP team will consider using positive behavioral interventions, strategies, and supports to address the behavior. The IEP team will also consider:

- ◆ developing goals and services specific to your child's behavior; or
- ◆ conducting a behavioral assessment to determine if a BIP is needed.

What happens when my child is suspended for 10 school days or less?

Short-term removals. A child with a disability may be removed (suspended) for 10 cumulative school days or less in a school year without the school having to:

- ◆ conduct a manifestation determination; or
- ◆ provide services.

After this 10-school-day period, a child with a disability may be suspended for up to 10 school days for separate incidents of misconduct as long as there is no pattern. In deciding if there is a pattern, the school must consider:

- ◆ the nearness of the suspensions to one another;
- ◆ the length of each suspension;
- ◆ the total number of days of the suspensions; and
- ◆ whether the child's behavior is substantially similar to behaviors that caused your child to be suspended previously.

Because isolated, short-term suspensions for unrelated instances of misconduct may not be considered a pattern, these suspensions would not amount to a change in placement.

After the first 10-school-day suspension, what are the school's responsibilities during subsequent short-term suspensions?

School personnel will consult with your child's special education teacher and decide what services are necessary for your child to appropriately:

- ◆ participate in the general curriculum; and
- ◆ progress toward achieving the child's IEP goals.

School personnel will include your child in statewide and divisionwide assessment programs, including allowing your child to take the Virginia Standards of Learning tests he or she would take if not suspended.

What happens if my child is expelled or suspended for more than 10 days?

Long-term removals. Any expulsion or any suspension for longer than 10 school days in a row is considered a change in placement. The IEP team will determine the extent to which services are necessary to progress appropriately in the general curriculum and accomplish the goals in the IEP.

Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP)

An FBA is a process to determine the underlying cause or functions of a child's behavior that interferes with the learning of the child with a disability or the learning of his or her peers. A FBA may include a review of information that you or the school already have, or it may include new information obtained from new tests or new evaluations, as determined by your child's IEP team.

The IEP team develops the BIP. A BIP uses positive behavioral interventions and supports to address behaviors that:

- ◆ interfere with the learning of the child with a disability;
- ◆ interfere with the learning of others; or
- ◆ require disciplinary action.

For more information, refer to the VDOE Web site for "An Overview of Functional Behavioral Assessment and Behavioral Intervention Plans in Virginia's Schools."

A series of short-term suspensions that together total more than 10 school days may constitute a change in placement based on the following factors:

- ◆ the nearness of the suspensions to one another;
- ◆ length of each suspension;
- ◆ the total amount of time your child is suspended; and
- ◆ whether the behavior for which your child is suspended is substantially similar to behaviors that caused your child to be suspended previously.

If your child's school determines that a series of short-term suspensions constitutes a pattern, it is considered a change in placement, and the same procedure applies as with long-term suspensions and expulsions.

Under what circumstances is my child removed to an interim alternative educational setting (IAES)?

Interim Alternative Educational Setting (IAES). A school may remove your child to an appropriate IAES for up to 45 calendar days for:

- ◆ carrying a weapon to or possessing a weapon at school, on the school premises, or a school function;
- ◆ possessing or using illegal drugs or selling or soliciting the sale of a controlled substance while at school, on the school premises, or a school function; or
- ◆ inflicting serious bodily injury on another person at school, on the school premises, or a school function.

If the safety of the school or your child is at issue, a school may assign him or her to an IAES for up to 10 days after consultation with the special education teacher and then request:

- ◆ your consent through the IEP process for a longer stay in an IAES;
- ◆ a hearing officer's order for a longer stay up to 45 days in an IAES through an expedited hearing; or
- ◆ a court-ordered injunction.

What responsibilities does the school have if my child has a long-term removal?

On the date the school decides to do a long-term removal, school personnel must:

- ◆ notify you of the decision; and
- ◆ provide you a copy of the procedural safeguards notice.

For a long-term removal, the IEP team must:

- ◆ decide what services are necessary for your child to appropriately participate in the general curriculum, progress toward achieving the goals outlined in your child's IEP, and to receive the services outlined in your child's IEP;
- ◆ if appropriate, complete a FBA and develop a BIP (including behavioral intervention strategies and modifications) to address your child's behavior to ensure that it does not occur again;
- ◆ conduct a manifestation determination review; and
- ◆ reaffirm or revise the IEP placement and/or services.

School personnel will include your child in statewide and divisionwide assessment programs, including allowing your child to take the Virginia Standards of Learning tests he or she would take if not suspended or expelled.

Manifestation determination. Before the school removes a child with a disability that constitutes a change in placement, the relevant members of the IEP team must meet immediately, but no later than 10 school days after the date of the decision to take action. In this meeting, called a manifestation determination review, the team decides whether your child's disability directly caused the misconduct.

To decide that the behavior was not a manifestation of the disability, the IEP team and other qualified people must:

- ◆ consider all relevant information in your child's file, including:
 - his or her IEP;
 - teacher observations of your child; and
 - relevant information supplied by you;
- ◆ determine if the behavior subject to disciplinary action was caused by or had a direct or substantial relationship to your child's disability; and
- ◆ determine if your child's behavior was the direct result of the school's failure to implement your child's IEP.



If your child's IEP team decides that the school did not implement your child's IEP, the school must correct its error immediately.

What happens if there is no manifestation of disability?

If the team decides that your child's disability did not cause the behavior, your child will be disciplined:

- ◆ with the same disciplinary procedures applied to a child without a disability; and
- ◆ in the same manner and for the same duration as children without disabilities.

During the removal, however, your child must continue to receive special education and related services.

If you disagree with the IEP team's decision, you may request an expedited due process hearing. During the hearing process, your child will remain in the disciplinary placement until either the hearing process is complete, or your child has completed the disciplinary period, whichever comes first.

What happens if there is a manifestation of disability?

If it is decided that your child's disability did cause the behavior, then he or she may not be removed from the current educational placement except through the IEP process. The IEP team also is responsible for conducting a FBA, if your child does not already have one, and developing and implementing a BIP. If your child has a BIP, the IEP team will review, and if appropriate, change the behavioral plan.

The exception to this process is if your child is placed in IAES. Then, school personnel may keep the child in IAES until the 45-day placement is completed.

Can a parent receive an Independent Educational Evaluation (IEE) for a FBA?

If your child's IEP team determines that your child's FBA will include new information from new tests or new evaluations, you may request an IEE if you disagree with the evaluation done by the school.

Can a child who is not yet eligible have these protections?

If your child has not been determined to be eligible for special education and related services, he or she may still have the right to a manifestation determination and other procedural protections if the school had knowledge that he or she had a disability before the behavior occurred. A school has this knowledge if:

- ◆ you have expressed your concern to school personnel in writing (or verbally if you cannot write or have a disability that prevents you from writing) that your child needs special education and related services;
- ◆ you have requested an evaluation to determine if your child is eligible to receive special education and related services; or
- ◆ a teacher or other school personnel have expressed concern about a pattern of behavior by your child to the special education administrator of your school or to another member of your school division's supervisory staff.

In these situations, the school:

- ◆ must evaluate your child immediately to decide whether he or she is eligible for special education and related services;
- ◆ has the option of providing services to your child while the school is completing the evaluations;
- ◆ has the option of keeping your child suspended or expelled while the school is completing the evaluations; and
- ◆ must notify you, if the school decides not to evaluate your child, and give you a copy of your procedural safeguards, including your right to request an expedited due process hearing to challenge the school's decision.

Otherwise, if the school does not have this knowledge, your child is disciplined in the same way as a child without a disability.

Your child may also be disciplined in the same way as a child without a disability if:

- ◆ a school has requested to evaluate your child for special education services before, and you have refused;
- ◆ your child has been found eligible for special education services before, but you have not provided your consent for your child to receive those services; or
- ◆ your child has been evaluated for special education services before, but determined to not be eligible for those services.

For more information about discipline, you may refer to the VDOE Web site (<http://www.doe.virginia.gov>) for “Discipline of Students with Disabilities - Technical Assistance Resource Document.”

Use of Public or Private Insurance

Can the school use insurance to pay for services?

A school may use Medicaid, or other insurance programs in which your child participates, to provide or pay for services required by special education law. However, a school must get your consent each time the following occurs:

- ◆ the school proposes to access Medicaid or other insurance proceeds; or
- ◆ the school must release educational information to Medicaid or another insurance company for billing.

A school is responsible for providing required services at no cost to you, regardless of whether you have insurance coverage, and regardless of whether you provide consent for the school to access your child's Medicaid or other insurance benefits. For example, you are not required to pay an insurance deductible or copay for your child to receive special education services.

Procedures for Resolving Disagreements

What happens if I disagree with school personnel?

If you disagree with your child's identification, evaluation, or educational placement or the provision of FAPE, there are three procedures that parents commonly use:

- ◆ mediation;
- ◆ due process hearing; and
- ◆ complaint.

Mediation

What is mediation?

Mediation in special education is a process in which a mediator assists people in negotiating issues arising under IDEA, including those affecting a child in special education. The mediator is neutral, not an advocate for any parties involved.

How is mediation conducted?

Mediation is conducted by a qualified and impartial mediator who is selected from a list maintained by the VDOE, trained in effective mediation techniques, and knowledgeable in special education law.

- ◆ Mediators are assigned to cases on a rotation basis.
- ◆ The mediator may not be an employee of any school or the VDOE if it directly serves a child who is the subject of the mediation.
- ◆ Although paid by the VDOE for each mediation conducted, the mediator is not considered an employee of the school or the VDOE.
- ◆ The mediator must not have a professional or personal conflict of interest.

Under what conditions is mediation held?

The mediation process must meet certain conditions.

- ◆ Mediation must be voluntary on the part of both the school and you.
- ◆ Mediation must not be used to deny or delay your right to a due process hearing or any other rights you are afforded.
- ◆ Mediation may be substituted for the Resolution Session that is held following a request for a due process hearing.
- ◆ Each mediation session must be scheduled in a timely manner and held in a location convenient to the parties in the dispute.
- ◆ If an agreement is reached by the parties, the mediation process must conclude with a written agreement that will be enforceable in court.
- ◆ Discussions that occur during the mediation process are confidential and may not be used as evidence in any later due process hearings or civil proceedings. In addition, the parties to the mediation process may be required to sign a confidentiality pledge before the beginning of the mediation process.
- ◆ If you choose not to use the mediation process, the school may establish procedures to request you to meet at a time and location convenient to you, with a qualified, neutral person. The purpose of this meeting is to explore the benefits of (and encourage you to use) the mediation process. However, the school may not deny or delay your right to a due process hearing if you choose not to participate in this meeting.
- ◆ The VDOE pays for the cost of mediation, including costs arising from the school's request for parents to meet with a neutral person, as explained above.

Additional information about mediation may be found in the VDOE brochure, "When Negotiations on Special Education Issues Are Difficult: Mediation," or you may refer to the VDOE Web site.

Complaint

What should I do if I want to file a complaint?

The VDOE operates a complaint system that investigates and makes decisions regarding violations of special education law. Any individual or organization may file a complaint with the VDOE by sending the following information:

- ◆ a written, signed statement that a violation of special education law has occurred within a year prior to the date the complaint is received;
- ◆ the facts on which the statement is based;
- ◆ contact information for the person filing the complaint and the student, including the name of the school the child is attending;
- ◆ a proposed resolution of the problem to the extent known and available to you; and
- ◆ all relevant documents and supporting information.

A copy of the complaint must be sent to both the VDOE and your school division at the same time.

Electronic Signature

An electronic document is considered signed if the sender includes an electronic sound, symbol, or process that demonstrates his or her intent to sign the document.

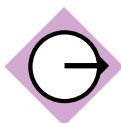
What is the role of the VDOE in the complaint process?

If the VDOE finds that the school did not follow the law, the VDOE must address corrective action for the violation, including, as appropriate:

- ◆ compensatory services;
- ◆ the awarding of monetary reimbursement;
- ◆ other corrective action appropriate to the needs of your child; or
- ◆ other corrective action as it applies to services for all children with disabilities.

The VDOE must resolve the complaint within 60 calendar days of receipt unless exceptional circumstances exist. However, you and the school may agree to extend the timeline to participate in mediation or another type of dispute resolution. Either the school or you have the right to appeal the VDOE findings through the VDOE complaint appeal procedures within 30 days of the decision.

For further information on complaint procedures, contact the VDOE to request a copy of the document, “Parent’s Guide to Special Education Dispute Resolution,” or refer to the VDOE Web site (<http://www.doe.virginia.gov/VDOE/dueproc>). You may download a sample complaint form and other information regarding complaints online. You also may get a sample complaint form, although not required, from the school or the VDOE.



TIMELINE

The VDOE must resolve the complaint within 60 calendar days of its receipt unless exceptional circumstances exist, or unless you and the school agree to extend the time limit so the parties may participate in mediation. You or the school may appeal the VDOE findings within 30 days of the decision.

Due Process Hearing

What is a due process hearing?

You and the school have the right to initiate a due process hearing. In deciding the dispute, an impartial third party, called a hearing officer, will hear evidence presented by you and the school and will then issue a decision based on the evidence and the law.

Hearing officers are attorneys with knowledge of special education law, who are appointed to due process hearings on a rotation basis through the Virginia Supreme Court. The VDOE trains the hearing officers on special education law, monitors the hearing process, and analyzes the hearing officers' decisions.

Under what circumstances is a due process hearing held?

You may request a due process hearing if you disagree with your child's identification, evaluation, or educational placement or the provision of a free appropriate public education.

In addition, a school has the right to initiate:

- ◆ a due process hearing if you refuse to give consent for an action that requires parental consent, except that a school may not request a hearing to obtain your consent for the initial provision of special education and related services to your child; or
- ◆ an expedited hearing if the school believes that maintaining your child's current placement is substantially likely to result in injury to your child or others. During the hearing the school may request placement in an interim alternative educational setting (IAES) until the due process proceedings are concluded.

If the school initiates a due process hearing, it will notify you in writing.

If you disagree with certain disciplinary actions, you may request an expedited hearing. Your disagreement must relate to:

- ◆ a decision that your child's behavior was not a manifestation of his/her disability;
- ◆ a decision that short-term removals do not constitute a pattern; or
- ◆ any placement decision under the disciplinary procedures.

Expedited Hearing

Expedited hearing means a hearing that is held without delay.

How do I obtain a due process hearing?

The procedure for initiating a due process hearing begins with sending a request for a hearing in writing to the VDOE with a copy to the school. The notice of the request must typically address a problem that happened no more than two years before the request. The notice must also include the following information:

- ◆ the name of your child;
- ◆ the address of the residence of your child, or if the child is homeless, available contact information;
- ◆ the name of the school your child is attending;

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- ◆ a description of your child’s problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
 - ◆ a proposed resolution of the problem to the extent known and available to you at the time you prepare the notice.

If the notice does not contain all of the required elements, within 15 days of receipt, the school may request the hearing officer to determine if it is sufficient. The hearing officer will make a decision within 5 calendar days. If the hearing officer decides that the notice is insufficient, he or she may offer you an opportunity to change the notice. If you do not change the notice, the due process hearing will be dismissed by the hearing officer.

What is a resolution period?

During the first 30 days after the notice is filed, there is an opportunity for the parties to resolve the dispute through continued discussion, including during a "resolution session". The resolution session will be convened within 15 days after the notice is filed, and will include:

- ◆ you;
- ◆ relevant members of your child's IEP team who have knowledge of the issues and facts identified in the notice;
- ◆ a school representative with the authority to make decisions on behalf of the school division; and
- ◆ the school's attorney, if your attorney also attends.

You and the school division may agree to waive the resolution session or to substitute mediation.

For an expedited due process hearing, the resolution period is the first 15 days after the notice is filed, and the resolution session must be held within seven days after the notice is filed.

When will the due process hearing be held?

At the conclusion of the 30-day resolution period, the 45-day period for the hearing officer to complete the due process hearing and mail a copy of the decision to you and the school will begin, unless:

- ◆ you and the school agree to not have a resolution session. If so, the 45-day period will begin.
- ◆ you do not attend the resolution session. If so, after the 30-day resolution period, the school may ask the hearing officer to dismiss your request for a hearing.
- ◆ the school does not convene the resolution session on time. If so, you may request that the hearing officer begin the 45 day period.
- ◆ you and the school division agree in writing that a resolution is not possible. If so, the 45 day period will begin.
- ◆ you and the school agree to use the mediation process. If so, the 45 day period will not begin until either you or the school division withdraw from mediation because a resolution is not possible.
- ◆ the school requested the due process hearing. If so, there is no requirement that a resolution session be held. Rather, the 45-day period may begin immediately unless the parties agree to participate in mediation.

For an expedited due process hearing, the due process hearing must be held within 20 school days after the notice is filed, and the decision must be provided to the parent at no cost within 10 school days after the hearing.

What are my responsibilities for a due process hearing?

Before the due process hearing, the hearing officer will schedule pre-hearing conferences to discuss concerns about the hearing and schedule hearing dates. You should be prepared to participate in these conferences. The conference is likely to be held over the telephone.

Five days before the hearing, each party to the hearing must provide copies of the documents they would like to use at the hearing and a list of the witnesses they will present at the hearing to the other party and the hearing officer. Only those documents that are provided and witnesses named in their list will be allowed to be presented at the hearing.

You also must

- ◆ make timely responses to the hearing officer;
- ◆ assist the hearing officer in clarifying the issues in the hearing;
- ◆ provide documents and exhibits in a timely manner; and
- ◆ comply with the hearing officer's orders and requests.

What are my rights in the due process hearing?

During the hearing process, you have the right to:

- ◆ be accompanied or advised by an attorney or other people with special knowledge or training about children with disabilities;
- ◆ present evidence and confront, cross-examine, and request that the special education hearing officer require that witnesses attend the hearing;
- ◆ request that the hearing officer refuse to allow the use of any evidence during the hearing that was not shared five days before the hearing;
- ◆ obtain a written, electronic, or word-for-word record of the hearing;
- ◆ obtain a written or electronic copy of the hearing officer's decision and findings of fact at no cost;
- ◆ have the child who is the subject of the hearing present; and
- ◆ have the hearing open to the public.

What happens if I do not agree with the hearing officer's decision?

You or the school may appeal the hearing officer's decision within 180 days of the decision to state circuit court or to federal district court within 90 days of the decision.

For further information about the due process hearing, contact the VDOE to request a copy of the document entitled, "Parents' Guide to Special Education Dispute Resolution" or refer to the VDOE Web site. You may view online a sample form for requesting a due process hearing. You also may get a sample form for this request, although not required, from the school or the VDOE.



TIMELINE

Unless an adjusted period applies, the resolution period is the first 30 days after the notice is filed, and the resolution session is convened 15 days after the notice is filed. For an expedited hearing, the resolution period is the first 15 days after the notice is filed, and the resolution session is convened within seven days after the notice is filed.

Within 15 days of its filing, the sufficiency of the notice may be challenged. The hearing officer will make a decision within 5 calendar days.

Five days before the hearing, documents and the witness lists must be exchanged.

Unless an exception applies, the due process hearing must be completed, and the decision issued within 45 days after the 30-day resolution period is completed. An expedited due process hearing must be held within 20 school days after the notice is filed, and the decision issued within 10 school days after the hearing.

You or the school may file an appeal to state circuit court within 180 days, or to federal district court within 90 days of the date of the hearing officer's decision.





CLOSING THOUGHTS

How can I support and encourage my child's learning?

The following suggestions will help to support your child's learning as well as promote a positive school/home partnership:

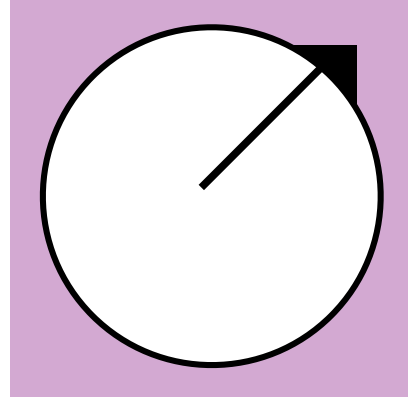
- ◆ Talk with other parents of children with disabilities, contact a Parent Resource Center, get involved in a local parent group, and attend workshops to learn more about the education of children with disabilities.
- ◆ Attend all meetings concerning your child. Prepare by talking with your child about his or her feelings toward school, by listing your ideas about your child's strengths and weaknesses, your goals for your child, and by making notes about what you want to say during the meeting.
- ◆ Ask your child's teacher, the principal, or the special education administrator when you have questions.
- ◆ Communicate requests, concerns, or problems in writing and keep a copy for your own records.
- ◆ Let your child's teacher(s) know that you want to be involved in your child's education. Make time to talk with the teacher(s) and, if possible, visit the classroom.
- ◆ Explain any special equipment, medication, or medical problem your child has.
- ◆ Let the teacher(s) know about any activities or big events that may influence your child's performance in school.

Parent Resource Center

A school-based center that provides information and training for parents. The VDOE model includes a team consisting of an educator and a parent.

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- ◆ Ask that samples of your child's work be sent home. If you have questions or suggestions, make an appointment with the teacher(s) to talk about new ways to meet your child's goals.
 - ◆ Ask the teacher(s) how you can build upon your child's school activities at home.
 - ◆ Encourage behavior that leads to success in school, such as accepting responsibility, following rules, being organized, and being on time.
 - ◆ Volunteer to help in the classroom or school. This will let you see how things work in the school and how your child interacts with others. It also will help the school.
 - ◆ Remember that you and the school want success for your child. Working together can make this happen.

Thank you for your participation in the education of your child.



TIMELINES

CHILD FIND

SCREENING

The vision and hearing for all children must be screened within 60 days of the start of the school year in grades three, seven, and ten. School divisions must have procedures that include a timeline for completing additional screenings to determine if a referral for an evaluation for special education and related services is indicated.

SCHOOL-BASED TEAM

- ◆ The school-based team must meet within 10 business days after receiving a referral.
- ◆ A referral must be made to the special education administrator within 3 business days following the determination by the school-based team that your child is suspected of having a disability.

SPECIAL EDUCATION PROCESS

A. REFERRAL AND EVALUATION

- ◆ After the special education administrator receives the referral for evaluation, an evaluation must be conducted and eligibility determined within 65 business days unless:
 - you repeatedly fail or refuse to make your child available to be evaluated; or
 - your child transfers to a new school division during the evaluation process. This exception only applies if the new school division is making sufficient progress to complete the evaluation process and you and the new school division agree to a specific date when the evaluation process will be completed.

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- ◆ The parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data that cannot be obtained during the initial 65 business days.
 - ◆ If the special education administrator requests a review by the school-based team, the request must be made within 3 business days of the special education administrator's receipt of the referral and team's review must not delay the 65 business days.
 - ◆ A triennial reevaluation must begin in enough time for the process to be completed before the third anniversary of the date on which your child was last determined eligible. A reevaluation, for any other reason, must be completed within 65 business days from the date the special education administrator receives the request.
 - ◆ You and the eligibility group may agree in writing to extend the 65 business day timeline for the reevaluation to obtain information that cannot be obtained within the 65 business days.

B. ELIGIBILITY DETERMINATION

- ◆ A written copy of the evaluation report must be made available to you at least 2 business days before the eligibility meeting.
- ◆ Initial eligibility for special education and related services must be determined within 65 business days after the special education administrator receives the referral for evaluation, unless the parent and the eligibility group agree in writing to extend the 65 business day timeline to obtain additional data that cannot be obtained during the initial 65 business days.
- ◆ A written copy of the evaluation reports must be provided to you at the eligibility meeting or immediately following the meeting but, no later than 10 days after the eligibility meeting.

C. INDIVIDUALIZED EDUCATION PROGRAM

- ◆ The IEP must be developed within 30 calendar days of the initial determination of eligibility.
- ◆ Following a reevaluation process where the IEP team determines that your child is still eligible for special education services, the IEP must be developed within 30 calendar days if your child's IEP team determines that changes to the IEP are needed, or if you request that a new IEP be developed.
- ◆ Following a student's transfer to a new school division, an IEP meeting must be held no later than 30 calendar days after the new school completes its evaluation and determines your child's eligibility.

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- ◆ A copy of your child's IEP must be provided to you at no cost at the IEP meeting, or within a reasonable period of time, not longer than 10 calendar days after the meeting.

SCHOOL RECORDS

The school must respond to your request for access to your child's school records without unnecessary delay but within 45 calendar days of the request and sooner if the request involves an IEP meeting, resolution meeting or due process hearing.

PROCEDURES FOR RESOLVING DISPUTES

A. COMPLAINT

- ◆ The VDOE must resolve a written, signed complaint within 60 calendar days of its receipt, unless exceptional circumstances exist, or unless you and the school agree to extend the time limit so the parties may participate in mediation.
- ◆ You or the school may file an appeal within 30 days of the VDOE decision.

B. DUE PROCESS HEARING

- ◆ Unless an adjusted period applies, the resolution period is the first 30 days after the notice is filed, and the resolution session is convened 15 days after the notice is filed.
- ◆ For an expedited hearing, the resolution period is the first 15 days after the notice is filed, and the resolution session is convened within 7 days after the notice is filed.
- ◆ Within 15 days of its filing, the sufficiency of the notice may be challenged. The hearing officer will make a decision within 5 calendar days.
- ◆ Five days before the hearing documents and the witness lists must be exchanged.
- ◆ When a due process hearing is requested, a hearing officer will complete the hearing, issue a decision, and mail a copy of the decision to each party within 45 calendar days after the 30-calendar day resolution period is completed, unless an exception applies.
- ◆ An expedited due process hearing must be held within 20 school days after the notice is filed, and the decision issued within 10 school days after the hearing.
- ◆ You or the school may file an appeal to state circuit court within 180 days, or to federal district court within 90 days of the date of a hearing officer's decision.

ACRONYMS AND ABBREVIATIONS

504	A section of the Rehabilitation Act of 1973	HI	Hearing Impairment
ADA	Americans with Disabilities Act	HIPAA	Health Insurance Portability and Accountability Act of 1996
ADD	Attention Deficit Disorder	HOH	Hard of Hearing
ADHD	Attention Deficit Hyperactivity Disorder	IAES	Interim Alternative Education Setting
ADR	Alternative Dispute Resolution	ID	Intellectual Disabilities
APD	Auditory Processing Disorder	IDEA	Individuals with Disabilities Education Act
APE	Adaptive Physical Education	IDEIA	Individuals with Disabilities Improvement Act of 2004 (otherwise called IDEA)
APR	Annual Performance Report	IDELR	Individuals with Disabilities Education Law Reporter
ASD	Autism Spectrum Disorder	IEE	Independent Educational Evaluation
ASL	American Sign Language	IEP	Individualized Education Program
AT	Assistive Technology	IFSP	Individual Family Service Plan
AYP	Adequate Yearly Progress	IHO	Impartial Hearing Officer
BIP	Behavioral Intervention Plan	IQ	Intelligence Quotient
CAP	Corrective Action Plan	ISP	Individual Services Plan
CAPD	Central Auditory Processing Disorder	LAC	Local Advisory Committee (otherwise called SEAC)
CFR	Code of Federal Regulations	LEA	Local Educational Agency (School division or SOP)
CSA	Comprehensive Services Act	LEP	Limited English Proficiency
CSB	Community Services Board	LOF	Letter of Findings
DB	Deaf-Blindness	LRE	Least Restrictive Environment
DBVI	Virginia Department of Blind and Visually Impaired	MD	Multiple Disabled
DD	Developmental Delay	MDR	Manifestation Determination Review
DSM-IV-TR	Diagnostic and Statistical Manual of Mental Disorders, Fourth edition, Text Revision	NCLB	No Child Left Behind Act of 2001
ED	Emotional Disability	NIMAC	National Instructional Materials Accessibility Center
EDGAR	Education Department General Administrative Regulations	NIMAS	National Instructional Materials Accessibility Standard
EHA	Education of the Handicapped Act	NLD; NVLD	Non-verbal Learning Disability
EOC	End of Course	OCD	Obsessive Compulsive Disorder
ERS	Early Resolution System	OCR	Office for Civil Rights (at USED)
ESL	English as a Second Language	ODD	Oppositional Defiant Disorder
ESY	Extended School Year	OHI	Other Health Impaired
FAPE	Free Appropriate Public Education	OI	Orthopedic Impairment
FAPT	Family Assessment Planning Team	O&M	Orientation and Mobility Services
FBA	Functional Behavioral Assessment	OSEP	Office of Special Education Programs (at USED)
FERPA	Family Educational Rights and Privacy Act		
FOIA	Freedom of Information Act		

OSERS	Office of Special Education and Rehabilitative Services (at USED)	SPED	Special Education
OT	Occupational Therapy	SPP	State Performance Plan
PDD	Pervasive Developmental Disorder	SSEAC	State Special Education Advisory Committee
PE	Physical Education	STO	Short-term Objective
PLOP	Present Level of Performance	TBI	Traumatic Brain Injury
PRC	Parent Resource Center	T/TAC	Training /Technical Assistance Center
PSD	Procedural Safeguards Document	USC	United States Code
PT	Physical Therapy	USED	United States Department of Education
PTSD	Post Traumatic Stress Disorder	VAAP	Virginia Alternative Assessment Program
PWN	Prior Written Notice	VAC	Virginia Administrative Code
RtI	Response to Intervention	VDOE	Virginia Department of Education
SEA	State Educational Agency (otherwise called VDOE)	VGLA	Virginia Grade Level Alternative Program
SEAC	Special Education Advisory Committee (otherwise called LAC)	VI	Visual Impairment
SI	Sensory Integration	VR	Vocational Rehabilitation Services
SLD	Specific Learning Disability	VSDB	Virginia School for the Deaf and the Blind at Staunton
SLI	Speech Language Impairment	VSEP	Virginia Substitute Evaluation Program
SOL	Standards of Learning Test		
SOP	State-Operated Program		
SP/L; S/L	Speech/Language		

GLOSSARY

These definitions are taken from the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective July 7, 2009.

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, § 1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent(s) of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§ 1-204 of the Code of Virginia; 34 CFR 300.520)

"Agree or Agreement" – see the definition for "consent."

"Alternate assessment" means the state assessment program, and any school divisionwide assessment to the extent that the school division has one, for measuring student performance against alternate achievement standards for students with significant intellectual disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

"Alternative assessment" means the state assessment program for measuring student performance on grade level standards for students with disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

The term does not include a medical device that is surgically implanted, or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent(s) as part of the general education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

1. Identification of children with hearing loss;

2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC § 2301 et seq.)

1. Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a master's or doctoral degree) in current or emerging employment sectors;
2. May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subdivision; or
3. Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential and includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupational-specific skills.

"Caseload" means the number of students served by special education personnel.

"Change in identification" means a change in the categorical determination of the child's disability by the group that determines eligibility.

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;
2. The expulsion or long-term removal of a student with a disability;
3. The placement change that results from a change in the identification of a disability;
4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;
5. Termination of all special education and related services; or
6. Graduation with a standard or advanced studies high school diploma.

A "change in placement" also means any change in the educational setting for a child with a

disability that does not replicate the elements of the educational program of the child's previous setting.

"Change in placement" or "change of placement,"

for the purposes of discipline, means: (34 CFR 300.536)

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:
 - a. The length of each removal;
 - b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
 - c. The total amount of time the student is removed; or
 - d. The proximity of the removals to one another.

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§ 22.1-212.5 through 22.1-212.16 of the Code of Virginia; 34 CFR 300.7)

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M 3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related

service under Virginia standards, the child would be determined to be a child with a disability. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

"Collaboration" means interaction among professionals as they work toward a common goal. Teachers do not necessarily have to engage in co-teaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent(s) of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system for services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s') or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.)

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

"Controlled substance" means a drug or other substance identified under schedules I, II, or III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530(i)(1))

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

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§ 16.1-228 and 53.1-1 of the Code of Virginia)

"Coteaching" means a service delivery option with two or more professionals sharing responsibility for a group of students for some or all of the school day in order to combine their expertise to meet student needs.

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22))

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than three inches in length. (18 USC § 930(g)(2); § 18.2-308.1 of the Code of Virginia)

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they

cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;
2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
3. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent(s) and a local educational agency. A due process hearing involves the appointment of an

impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR 300.507)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3); § 22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;
2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;
3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act as in effect prior to June 4, 1997.

"Eligible student" means a child with a disability who reaches the age of majority and to whom the procedural safeguards and other rights afforded to the parent(s) are transferred.

"Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined in this section.

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student,

as may be appropriate, and that shall be computed after deducting: (34 CFR 300.16)

1. Amounts received:
 - a. Under Part B of the Act;
 - b. Under Part A of Title I of the ESEA; and
 - c. Under Parts A and B of Title III of the ESEA; and
2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

1. Are provided to a child with a disability:
 - a. Beyond the normal school year of the local educational agency;
 - b. In accordance with the child's individualized education program;
 - c. At no cost to the parent(s) of the child; and
2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC § 7801(11))

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and
4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the

child with a disability or the learning of the child's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

"Highly qualified special education teacher" means a teacher has met the requirements as specified in 34 CFR 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment. (34 CFR 300.18)

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a parent(s), guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§ 22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in § 725 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC § 11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of § 103(a)(2)(C);
3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory children (as such term is defined in § 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§ 22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

"Impartial special education hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.

"Implementation plan" means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502 (a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act" means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family. (34 CFR 303.24; 20 USC § 636)

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (§2.2-5300 of the Code of Virginia; 34 CFR 300.25)

1. Has delayed functioning;
2. Manifests atypical development or behavior;
3. Has behavioral disorders that interfere with acquisition of developmental skills; or
4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

"Informed parental consent": see "Consent."

"Initial placement" means the first placement for the child to receive special education and related services in either a local educational agency, other educational service agency, or other public agency or institution for the purpose of providing special education or related services.

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued speech/language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

"Level I services" means the provision of special education to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Level II services" means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual: (20 USC § 7801(25); 34 CFR 300.27)

1. Who is aged 2 through 21;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or
3. Who:
 - a. Was not born in the United States or whose native language is a language other than English;
 - b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
 - a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;
 - b. The ability to successfully achieve in classrooms where the language of instruction is English; or
 - c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton. Neither state-operated programs nor the Virginia School for the Deaf and the Blind at Staunton are considered a school division as that term is used in these regulations. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

"Long-term placement" if used in reference to state-operated programs as outlined in 8VAC20-81-30 H means those hospital placements that are not expected to change in status or condition because of the child's medical needs.

"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§ 22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" - see "Intellectual disability."

"Multiple disabilities" means simultaneous impairments (such as intellectual disability with blindness, intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: (34 CFR 300.172)

1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the U.S. Secretary of Education, made available to such center by the textbook publishing industry, state educational agencies, and local educational agencies;
2. Provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe; and
3. Develop, adopt and publish procedures to protect against copyright infringement, with respect to print instructional materials provided in accordance with the Act.

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard established by the United States Secretary of Education to be used in the preparation of electronic

files suitable and used solely for efficient conversion of print instructional materials into specialized formats. (34 CFR 300.172)

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent(s) of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the parent(s), or, if the language or other mode of communication of the parent(s) is not a written language, oral communication in the primary language of the home of the parent(s). If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
3. To understand and use remaining vision and distance low vision aids; and
4. Other concepts, techniques, and tools.

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome that adversely affects a child's educational performance. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§ 20-124.6 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":

- a. A biological or adoptive parent of a child;
 - b. A foster parent:
 - (1) If the biological parent(s)' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia or a comparable law in another state;
 - (2) The child is in permanent foster care pursuant to Chapter 9 (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia or comparable law in another state; and
 - (3) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of the parent under this chapter, and has no interest that would conflict with the interests of the child;
 - c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);
 - d. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
 - e. A surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220; or
 - f. A minor who is emancipated under § 16.1-333 of the Code of Virginia.
2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person(s) shall be determined to be the "parent" for purposes of this definition.
 3. "Parent" does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.
 4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make

-
- educational decisions for the child.
5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.
 6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.
 7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record and, thus, assumes responsibilities of "parent" under this chapter.

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special

physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

"Private school children with disabilities" means children with disabilities enrolled by their parent(s) in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
6. Assisting in developing positive behavioral intervention strategies.

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent(s). (34 CFR 300.502(a)(3)(ii))

"Public notice" means the process by which certain information is made available to the general

public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods that are likely to succeed in providing information to the public.

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC § 701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and
4. Leisure education.

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. (34 CFR 300.34(c)(12))

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;
2. Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
3. Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that: (20 USC § 9501(18); 34 CFR 300.35)

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data

- across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC § 701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. (18 USC § 1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the local educational agency will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure

Regulations for School Personnel, 8VAC20-22-660; 34 CFR 300.34(c)(14))

1. Preparing a social or developmental history on a child with a disability;
2. Group and individual counseling with the child and family;
3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
5. Assisting in developing positive behavioral intervention strategies for the child.

A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.

"Special education" means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training.

"Special education hearing officer" has the same meaning as the term "impartial hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

1. To address the unique needs of the child that result from the child's disability; and
2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

"State assessment program" means the state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§ 22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. (34 CFR 300.172(b)(4))

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

1. Early childhood special education to the extent that those services are appropriate; or
2. Other services that may be available, if appropriate.

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which they live; and

2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Universal design" has the meaning given the term in § 3 of the Assistive Technology Act of 1998, as amended, 29 USC § 3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton" means the Virginia school under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of this school. (§ 22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

1. A foster child;
2. A ward of the state; or
3. In the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets the definition of a "parent."

"Weapon" means dangerous weapon under 18 USC § 930(g)(2). (34 CFR 530(i)(4))

APPENDIX

The following information is taken from the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective July 7, 2009.

Staffing Information

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

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	8	6	24
Deaf-blindness	8	6	
Developmental Delay: age 5-6	10	8	
Developmental Delay: age 2-5	8 Center-based 10 Combined	12 Home-based and/or Itinerant	
Emotional Disability	10	8	24
Hearing Impairment/Deaf	10	8	24
Intellectual Disability	10	8	24
Learning Disability	10	8	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	8	24
Other Health Impairment	10	8	24
Speech or Language Impairment	NA	NA	68 (Itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services	20 Points (see Figure 2)		

Figure 2. Values for students receiving Level I services when combined with students receiving Level II services.

Disability Category	Level II Values		Level I Values
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental Delay: age 5-6	2.0	2.5	1
Emotional Disability	2.0	2.5	1
Hearing Impairment/Deaf	2.0	2.5	1
Intellectual Disability	2.0	2.5	1
Learning Disability	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
Traumatic Brain Injury	2.0	2.5	1

(8 VAC 20-81-340)

Other Staffing Information

- A.3.b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.
- (1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.
 - (2) The building average shall not exceed 20 points if services are provided to students receiving Level I services and to children receiving Level II services. The building average shall not exceed 24 points if services are provided only to children receiving Level I services.
 - (3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels.
(8 VAC 20-81-40 A 3)
- C. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.
(8 VAC 20-81-40 C.)
- D. Alternative special education staffing plan. School divisions and private special education schools may offer for consideration of approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant approval for alternative staffing levels upon request from local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.
(8 VAC 20-81-40 D.)
- E. Educational interpreting services.
1. The qualification requirements for personnel providing interpreting services for children who are deaf or hard of hearing are as follows:
 - a. Personnel providing educational interpreting services for children using sign language shall:
 - (1) Have a valid Virginia Quality Assurance Screening (VQAS) Level III; or
 - (2) Have a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
 - b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
 - c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.
 2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with the following criteria:
 - a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or
 - b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.

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3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:
 - a. Personnel providing educational interpreting services for children using sign language shall hold:
 - (1) A valid Virginia Quality Assurance Screening (VQAS) Level III; or
 - (2) A passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
 - (3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.
 - (4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.
 - b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
 - (1) Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.
 - (2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.
 - c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
 4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.
(8 VAC 20-81-40 E.)

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