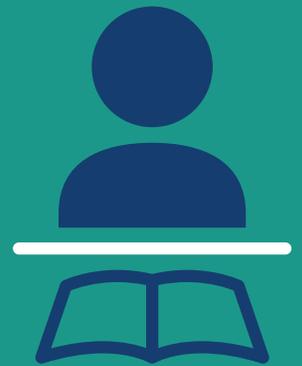




The  
**Virginia**  
**Family's**  
**Guide** to  
Special Education



VIRGINIA DEPARTMENT OF  
**EDUCATION**

# **The Virginia Family's Guide to Special Education**

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Virginia Department of Education, Department of Special Education and Student Services

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## Introduction

The Virginia Family's Guide to Special Education

In an attempt to continue to publish thorough and comprehensive documents for **special education** in Virginia, this revised and edited guide is a new version of the previously written "Parent's Guide to Special Education," which was last revised in 2010.

This new state guide was developed by the Virginia Department of Education (VDOE) in order to help those involved in special education, whether as parents (as defined in this document), teachers or school administrators, advocates, or students. Meeting the needs of children with disabilities requires an understanding of rights and responsibilities which include the child's rights, and the school's responsibilities to meet their needs. This guide includes a description of the special education process and what is required during each step of that process. Important timelines are highlighted in each section.

We wish to extend special thanks to the following organizations for their contribution to the completion of this revised guide:

- The Virginia Department of Education's Family Engagement Network (FEN)
- The Parent Educational Advocacy and Training Center (PEATC)
- Formed Families Forward
- The Center for Family Involvement (CFI) at the Partnership for People with Disabilities at Virginia Commonwealth University (VCU)
- Project HOPE Coordinated by the William and Mary School of Education for the Virginia Department of Education

This document is not meant to limit or replace state regulations.

## **From Dr. Samantha Hollins**

Assistant Superintendent, Special Education and Student Services  
Virginia Department of Education

As the Assistant Superintendent of Special Education and Student Services (SESS) at the Virginia Department of Education (VDOE), it is my sincere privilege to work on behalf of children with disabilities and their families throughout the Commonwealth. Family and community engagement in schools has long been recognized as a powerful force that guides the education and promotes the success of our young people. In fact, the *Individuals with Disabilities Education Act of 2004* (IDEA) states:

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by... strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home.

The VDOE continues to support the valuable work being done at the local school division level by families, teachers, administrators, and others in order to help students with disabilities to receive the free appropriate public education to which they are entitled. It is our sincere hope that this guide will provide valuable information for families so that they can feel fully prepared to be the equal partners that their children need for them to be within the special education process.

We are pleased to provide this updated Virginia Family's Guide to Special Education. And it is my hope that the continued and consistent efforts of all of us will further our efforts to maximize the potential of all students in Virginia.

## Understanding Special Education Law

### State and Federal Special Education Law

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 (age of eligibility)**. 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). Amendments in 1997 further 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 January 25, 2010), 8 VAC 20-81- 10 et seq., and the *Code of Virginia*.

The 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)**.

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).

The provision of FAPE also requires that the services provided to a **child with a disability** address all of the child's identified special education and related services needs and that the services and **educational placement** is based on the unique needs and not solely on the child's disability.

## Section 504

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 based on a person's disability in any program or activity receiving federal funding, including education. More specifically, this law protects the rights of qualified persons with a disability who are of school age. The **Section 504** regulations require schools, which 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.

Though not explicitly required by the Section 504 regulations, school divisions often document the elements of an individual student's FAPE under Section 504 in a document, referred to as a Section 504 Plan. A Section 504 Plan describes the education and related aids and services a student needs and the appropriate setting in which to receive those services.

A written Section 504 Plan is often used to document that the school division engaged in a process to identify and address the needs of a student with a disability and to communicate, to school personnel, the information needed for successful implementation. Note, though, that IDEA-eligible students with disabilities who have an IEP are not required to also have a Section 504 plan even though they are protected under Section 504. For these students, the IEP developed and implemented in accordance with the IDEA is sufficient.

For more information on this law, you may refer to the [US Department of Office of Civil Rights](#).

# Understanding the Special Education Process

## An Overview of the Special Education Process

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 the parent. It also includes instruction in physical education. 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 required.

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

1. **Identification and Referral** - When it is suspected that a child may have a disability, a referral, which is a written or oral request for an evaluation, is given to the school. There are a number of ways to make a referral, which will be explained further below.
2. **Evaluation** - The school then evaluates the child to determine whether he or she has a disability, as well as the nature and extent of the special education and related services that the child needs.
3. **Determination of Eligibility** - Based on the results of the evaluation, a team decides if the 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. **The Individualized Education Program (IEP) and Determination of Services** - If a child is eligible to receive special education and related services, a team then develops and implements an appropriate IEP to meet the needs of the 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 the child to determine whether the child continues to need special education and related services, unless the parent and the school agree that a reevaluation is not necessary. Parents and/or schools may request reevaluations more frequently than every three years, if necessary.

Through this five-step process, all relevant and comprehensive information is gathered and considered by a group of people, including the parent, within certain timelines and with certain **procedural safeguards**. Timelines help to prevent any delay. Procedural safeguards, which are rights given to the parent of the child with a disability, ensure that the child is provided with a

free appropriate public education.

A parent's involvement in each step of the process is vital.

Special education law defines the **parent** as:

- Biological or adoptive parent<sup>1</sup>;
- Foster parent, if the biological or adoptive parent's educational rights have been terminated or under specific circumstances (refer to [Note](#) below);
- Guardian, authorized to act as the child's parent or to make educational decisions (but not a guardian ad litem [GAL]);
- Person acting in place of a parent (such as a grandparent, stepparent, or other relative) with whom the child lives, or a person legally responsible for the child's welfare;
- **Surrogate parent** who is appointed by the school division if no parties can be identified who meet the definition of parent or who are willing to act as a parent;
- An emancipated minor or validly married minor may also assume the responsibilities of a parent; or
- In the case of unaccompanied homeless youth, a temporary surrogate may act as the parent until a surrogate can be appointed.

There may be situations in which several parties meet the definition of parent. When attempting to act as the parent, the biological or adoptive parent shall be presumed to be the parent unless educational decision-making rights have been terminated.

Note:

If a child is living with a foster parent but the biological parental rights have not been terminated, the school division will allow the foster parent to act as a parent. The school division must send the biological or adoptive parent a written **notice** that school personnel will rely on the foster parent to make decisions regarding the child's special education **program**. These decisions relate to matters regarding the child's IEP services and placement, as well as eligibility decisions. The school division will send the parent 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 the child's IEP or eligibility for special education and related services. The school division notice remains in effect until the parent advises the school division that he or she will respond as the child's biological or adoptive parent in matters involving the child's special education program.

Transfer of Rights: Once a child turns 18 years old, rights under special education law transfer to

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<sup>1</sup> Either parent may act as the parent, unless there is evidence of a legally binding instrument, state law or court order that has terminated a parent's parental rights. Both parents should receive notices unless this is the case.

the student. If a child cannot make decisions on his or her own, parents will need to take steps to continue to be involved. The IEP Team must include a statement at least one year before a child turns 18 years old that the parent and child have been advised that the educational rights transfer to the child upon reaching eighteen. For more information on this topic, refer to [Transfer of Rights for Students with Disabilities Upon Reaching the Age of Majority in Virginia](#).

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.

## The Five-Step Process

### 1 Identification and Referral

Schools must locate, identify, and evaluate those children in Virginia, regardless of citizenship or immigration status, who need special education and related services to meet the **Child Find** regulation in the law. This includes 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);
- Are suspected of being children with disabilities and in need of special education even though they are advancing from grade to grade;
- Under 18 years old, who are suspected of having a disability in need of special education and related services, and who are incarcerated in a regional or local jail for ten or more days or under house arrest;
- Suspended or expelled;
- In foster care; or
- Placed in a private residential placement by a **Children's Services Act team (CSA)**. Additional information is available on the [CSA website](#).

**Screening** is part of the identification process. Parents receive a general notice about the screening and will be notified if their child fails the screening. Schools conduct screenings based on local procedures, which will include timelines. Screenings must be done in the areas of speech, voice, language, and fine and gross motor functions. Schools also either provide information about scoliosis or do regular screenings of students in grades five through ten for scoliosis. The vision and hearing for all children in grades three, seven, and ten, 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.

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.

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

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

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

Referrals for evaluation can begin in a number of different ways. Referring sources including a parent, a teacher, another person, or the school-based team may request an evaluation at any time by writing or by speaking to the school division's special education administrator or someone designated by the administrator. Although the person requesting an evaluation is not required to put the request in writing, a written request documents the 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. The administrator can initiate the evaluation process, deny the evaluation or refer the request to a school-based team.

Each school establishes a school-based team to process referral requests for children suspected of having a disability. School personnel, the parent, or another person may refer a child to this team, or an evaluation request can be referred to the team by the special education administrator. 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 a child's performance, the school-based team may use a process based on the 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 does not unnecessarily delay the child's evaluation for special education. If the child does not make appropriate progress using these interventions, the team will refer the child to the special education administrator for an evaluation to determine if the 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," "instructional support team," or "child study." As a member of the committee, the building principal or designee (a person chosen by the principal to act in his or her place) receives all referrals to the team.

The team includes the following people:

- The person referring the child (except where it would breach confidentiality);
- The principal or designee;
- At least one teacher; and

- At least one specialist.

NOTE: The team must include at least one person with knowledge of alternative interventions and the procedures required to access programs and services that are available to assist with children's educational needs.

NOTE: There is nothing in federal or state special education laws and regulations that requires that a parent be a part of the required school-based team unless they are the referring source.

NOTE: Other people with specialized training may also be included on the team if the school determines that this will help to meet the child's needs or if the 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 any strategies that the school-based team puts in place. Any action by the team must be in writing and must include the information on which the decision is based. Once the team decides to evaluate, whether the referral came from the division's special education administrator or from someone else, the evaluation process moves forward.

#### TIMELINE

If the school-based team receives the referral, it must meet within ten business days after receiving a referral. The team must refer the child to the special education administrator within three business days if the team suspects that the child has a disability.

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 a parent with **prior written notice (PWN)** and a procedural safeguards notice.

#### TIMELINE

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

## 2 Evaluation

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

- Give the parent prior written notice and a copy of the procedural safeguards in the parent's **native language**, unless it is clearly not feasible to do so, about the referral, the purpose of the evaluation and parental rights;
- Inform the parent of the procedures for the evaluation process;
- Involve the parent in deciding what evaluation information is needed and request any evaluation information that the parent may have;
- Include the parent as a member of the team reviewing evaluation data and deciding whether more information is needed;
- Get the parent's 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:

- The parent repeatedly fails or refuses to make the child available to be evaluated;
- The parent and the school division **agree in writing** to extend the 65 business day timeline to obtain additional data that cannot be obtained within the 65 business days; or
- The 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 the parent and the new school division agree to a specific date when the evaluation process will be completed.

If the parent does not give consent, the school may use **due process** procedures or mediation procedures to conduct the evaluation. These are discussed in detail later in this guide. Parental consent is not required before reviewing existing information, administering an assessment that is administered to all children without parental consent, or screening the child to determine the most appropriate instructional strategies to use with the child.

If a child is home-instructed or home-tutored, or if a child is in a private school placement at the parent's expense, a parent may choose to not provide consent for the child to be evaluated. In this case, if the parent does not give consent for the evaluation, or if the parent fails to respond to a request for consent to evaluate the child, the school may not use the due process or mediation procedures to conduct the evaluation.

A school division may not require that a child take prescription medication as a condition for attending school, receiving an evaluation, or receiving special education and related services. The first step of the evaluation process is determining the data that needs to be collected and should begin with a review of existing data that would include:

- any evaluation or screening information already in the child's educational record;
- evaluations and information provided by the parent(s) of the child;

- current classroom-based, local, or state assessments and classroom-based observations;
- observations by teachers and related services providers; and
- any additional input from the child's parent.

Decisions about data and information collection are made by a group that includes:

- The parent;
- At least one of the child's general education teachers if the child is in general education classes or a general education teacher if the child may participate in general education in the future;
- At least one special education teacher or related services provider (this person must be serving the child if the child is already 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;
- A person who can interpret what the tests mean for the child's education (this person may be another member of the team, other than the parent or the child);
- Other people who are invited at the parent's or the school's discretion and who have knowledge or special expertise about the child (the person inviting another individual makes the decision that the invited individual has knowledge or special expertise about the child);
- The child, if appropriate; and
- Other qualified professionals, as appropriate.

The child must be tested by qualified personnel in all areas related to the suspected disability.

These may include, if appropriate:

- Health including vision and hearing;
- Social and emotional status;
- General intelligence;
- Academic performance;
- Motor abilities;
- Adaptive behavior; and
- Communicative status.

The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the **local educational agency (LEA)** shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate.

The LEA must have policies and procedures in place to ensure that the following requirements

are met.

Assessments and other evaluation materials used to assess a child under this chapter are:

- Selected and administered so as not to be discriminatory on a racial or cultural basis;
- Provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
- Used for the purposes for which the assessments or measures are valid and reliable; and
- Administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.

#### TIMELINE

The evaluation report(s) must be made available to the parent at least two business days before the eligibility meeting. A written copy of the evaluation reports must be provided to the parent at the eligibility meeting or immediately following the meeting, but no later than ten days after the eligibility meeting. The evaluation report(s) must be provided at no cost to the parent(s).

If a child moves to a new school division during the evaluation process the two school divisions, the previous one and the present one, 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 the child's previous school division received the request for the child to be evaluated, unless:

- The new school is making sufficient progress to complete the evaluation process; and
- The parent and the new school agree to a specific date when the evaluation process will be completed.

If the decision is not to evaluate, a parent must be given a prior written notice of the decision that includes notification to the parent(s) of their right to appeal the decision through a **due process hearing**.

#### Independent Educational Evaluation (IEE)

If the parent disagrees with the results of a test given during the child's evaluation process, the parent has the right to have an **independent educational evaluation (IEE)** conducted by a qualified person who does not work for the school.

The parent has the right to obtain an IEE at public expense.

The school division must either:

1. Ensure that an IEE at public expense is provided, or
2. Initiate a due process hearing to show that the school division's evaluation is appropriate.

Upon the parent's request for an IEE, the school division must provide 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 criteria, 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.

The results of the IEE, and any evaluations obtained at private expense that are shared with the school division, must be **considered** in any decision about the child's provision of a free appropriate public education, if it meets the local educational agency criteria and may be presented as evidence at a due process hearing by the parent or the school division.

### 3 Determination of Eligibility

Once the evaluations are completed, a decision is made to determine whether the 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 **Individualized Education Program (IEP) Team** or an eligibility group and must include:

- A parent;
- A special education teacher;
- The special education administrator;
- School personnel from disciplines providing the assessments;
- The child's general education teacher (or, if the child does not have a general education teacher, a general education teacher qualified to teach at the 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 the child's educational needs by observing and documenting the observation of the child in his or her learning environment at school.

This observation may be conducted before the referral for evaluation. If not, a member of the child's eligibility group will conduct an observation in the child's general education classroom after the referral for evaluation. If the child is not in school, an eligibility group member must observe the child in an environment that is appropriate for the child's age group. If the school uses a process to determine the child's response to scientific, research-based interventions, then

the eligibility group will consider information from this process to determine whether the child is a child with a disability.

For a child to be found eligible as a child with a disability, he or she must meet the specific criteria adopted by the Virginia Department of Education, and the child's disability must affect his or her educational performance. Criteria for these disability categories are included in [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#).

Disability categories are listed in the glossary under "child with a disability." Also, each disability is individually defined in the glossary.

In determining eligibility, the group will hold an eligibility meeting to look at the evaluation results and information from a variety of sources and consider if the 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 obtain the parent's consent for the eligibility determination. It also will give the parent copies of the evaluation reports and documentation of the eligibility group's decision at no cost. The documentation must include information about:

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

If the child has participated in a process to determine the 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 the child's rate of learning; and
- The parent's right to request an evaluation.

A child may not be found eligible if the reason the child meets the eligibility criteria is because he or she either:

- Has not had appropriate instruction in mathematics or reading; or
- Uses a language other than English.

If a 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 the child's eligibility without consent from the parent.

If a child is not found eligible for special education, the school will give the parent written notice about its decision. Important information relating to the 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 the child attends a private school outside the school division, the school will get the parent's consent to share this information with the private school. Additionally, the parent has a right to appeal the eligibility decision through a due process hearing.

## 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.

Each individual related service is defined in the glossary of this guide.

A child who is eligible for special education may then be 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.

Related services are 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 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.

#### 4 The Individualized Education Program (IEP) and Determination of Services

An IEP is a document designed to meet the 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 the child; and
- As soon as possible after the parent consents to the IEP.

#### TIMELINE

The IEP must be developed within 30 calendar days:

- Of the initial determination of eligibility;
- After a reevaluation is completed and the IEP Team determines the child is still eligible for special education services if the team decides changes are needed in an IEP, or if the parent requests it.

The IEP Team develops the IEP for a child with a disability. The team includes:

- The parent;
- At least one of the child's general education teachers if the child is or may be participating in general classes;
- At least one special education teacher or related service provider of the child (this person must be serving the child if the child is participating in special education; if the 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 the child (this person also may be another member of the team, other than the parent or the child);
- Other people who are invited at the parent's or the school's discretion and who have knowledge or special expertise about the child, including related services personnel, as appropriate (the person inviting another individual makes the decision that the invited individual has knowledge or special expertise about the child); and
- The child, if appropriate.

The school will decide who from the school will fill these roles. Required members of the child's IEP Team are not required to attend the IEP meeting, in whole or in part, if the required member's specialty area will not be discussed at the meeting, and the parent and the school agree in writing that the IEP Team member does not need to attend. Required members of the IEP Team may be excused from attending the IEP Team meeting, in whole or in part, when the

meeting involves modification to or discussion of the member's specialty, if the parent consents in writing to the IEP Team member being excused, and, before the meeting, the member has provided written input into the development of the child's IEP.

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

There may be other participants in an IEP meeting in certain circumstances:

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

Working together, the team will develop the child's IEP. Based on the factors considered at the meeting, the IEP Team will work toward consensus (**agreement**) in writing a child's IEP.

Because the IEP cannot be implemented without the parent's consent, the team, if in disagreement, needs to continue to work toward consensus. Any existing IEP is implemented until a new IEP is written with the parent's consent.

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

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

- Progress or lack of progress toward the child's annual goals;
- The results of any reevaluation;

- Information provided to or by the parent;
- The child's anticipated needs.

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 has the responsibility for ensuring the availability of a free appropriate public education to the transferring child.

If the 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 the parent and ensure that the child receives services comparable to those received in the previous school, until it either:

- Adopts and uses the existing IEP of the previous school with parent consent; or
- Conducts an evaluation, if it determines one is necessary, and develops and implements a new IEP for the child with the parent's consent.

The new school may provide interim services with the parent's consent while obtaining and reviewing information necessary to develop a new IEP for the child. However, if the parent and the new school cannot agree on interim services or a new IEP, the parent 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 the parent to provide the child with a free appropriate public education, which includes providing services comparable to those described in the child's previous IEP.

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

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

- Give the notice of its decision and the evaluation process to the parent;
- Conduct an evaluation with the parent's consent;
- Determine if the child continues to be eligible for special education and related services; and
- Develop an IEP.

During the evaluation period, the child will receive those services in the child's most recent IEP.

The **IEP** has several interrelated sections:

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

- Information and concerns from the parent with regard to their child’s strengths and challenges;
- How the school-age child’s disability affects his or her involvement and progress in the **general curriculum**;
- How the disability affects the preschool child’s participation in appropriate activities; and
- Educational needs resulting from the disability.

This section answers the question, “Where is the child today?”

**Measurable annual goals** - The IEP must state measurable annual goals, including academic and functional goals for the child, meaning what the team believes he or she reasonably can accomplish in a year given the student’s unique circumstances. The goals must relate to meeting the needs that result from the child’s disability. They also must help the child to be involved and progress in the general curriculum.

This statement of annual goals may include, if determined appropriate by the child’s IEP Team, individual steps (sometimes called short-term objectives) or major milestones (sometimes called benchmarks).

However, if the child's IEP provides that the child will participate in **alternative assessments** that reflect alternative achievement standards, the IEP must include benchmarks or short-term objectives.

Additionally, the IEP Team **must** document its consideration regarding the inclusion of benchmarks or short-term objectives in the child's IEP.

This section answers the question, “What do we think the student can accomplish in a year?”

**Measuring progress** - The IEP must state:

- How the child’s progress toward the annual goals will be measured; and
- When a parent will receive periodic reports on the child's progress toward meeting his or her annual goals. The child's progress reports are sent to the parent through the use of quarterly or other periodic reports at least as often as parents receive progress reports for children without disabilities.

This section answers the question “How will we know if the student has met the goals?”

**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 the child's nonparticipation in general education classes and activities.

**Special Education and Related Services** - This statement also includes changes to the program or supports for school personnel that will be provided for the 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 nonacademic and extracurricular activities.

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

- Post-secondary goals which are measurable and are based on age-appropriate transition assessments. The post-secondary goals cover employment, education, and training and, if appropriate, independent living skills; and
- Transition services, including courses of study, which the student needs to reach his or her goals. These services must be based on the student's needs and take into account 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 the student turns 16 (or younger, if the IEP Team decides that it is appropriate), the student's IEP must also include a statement of interagency responsibilities and linkages. If a **participating agency** does not provide the transition services described in the student's IEP, the school will call a meeting of the IEP Team to identify other ways to meet the transition goals.

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

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

Assessments- Participation in State and Division Assessments (refer to state [assessment program](#)) - The IEP must include a statement explaining:

- Any accommodations or modifications for the state or division tests;
- Reasons for the child's nonparticipation in the state or division tests;
- How the child's nonparticipation in these tests will affect his or her promotion, graduation with an advanced studies diploma, a standard diploma, or the applied studies diploma; and
- How the child will be assessed in each area of nonparticipation, and why the particular **alternate assessment** is appropriate for the child.

All students with disabilities must first be considered for participation in the Virginia Standards of Learning (SOL) assessments. The child's IEP must specify the child's participation in Virginia's state accountability system, whether in the SOL assessments (with or without accommodations) or the [Virginia Alternate Assessment Program \(VAAP\)](#). It is critical that schools ensure that parents fully understand that any decisions regarding a child's placement, even at a young age, may determine participation or non-participation in SOL assessments, which will then determine whether or not a child will be able to obtain either a Standard or Advanced Studies Diploma.

The VAAP is the statewide alternate assessment that is specifically designed to evaluate the achievement of students with significant cognitive disabilities in grades 3-8 and high school. Only students with significant cognitive disabilities who are eligible under IDEA and who meet the VAAP participation criteria may be assessed through the VAAP. Eligibility decisions can only be made through the student's IEP Team. Students with disabilities served by 504 Plans are not eligible for participation in the VAAP.

The VAAP is a multiple-choice assessment in the content areas of reading, mathematics, and science that is administered to students in an online or paper format. The VAAP is based on academic content standards derived from the Standards of Learning (SOL) in reading, mathematics, and science that have been reduced in depth, breadth, and complexity. These content standards are referred to as the Virginia Essentialized Standards of Learning (VESOL).

In deciding whether the 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 the child's IEP may be selected. For more information on these accommodations and modifications, you may refer to the [Virginia Department of Education website](#).

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

- All member of the child's IEP Team must be told of the changes; and
- If the parent requests it, he or she may receive a copy of the child's revised IEP at no cost.

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

Many areas of development and education for the child are discussed at an IEP meeting. The school also must ensure that the parent understands what is discussed at the meeting, including providing an interpreter for the parent if he or she is deaf or does not speak English.

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

- The strengths of the child and the parent's concerns about the child's education;
- The results of the first or most recent evaluation(s) of the child;
- The child's academic, developmental, and functional needs;
- Behavior intervention strategies and supports if the child's behavior interferes with learning;
- The 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 the child is blind or visually impaired;
- The communication needs of the child;
- The child's need for benchmarks and short-term objectives;
- The 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.

#### TIMELINE

A copy of a child's IEP must be provided to the parent at no cost at the IEP meeting, or within a reasonable period of time, not longer than ten calendar days.

#### Factors for the IEP Team to Consider

In addition, the IEP Team must consider all factors involved in providing a free appropriate public education for the child, including:

**Assistive technology device or service (AT)** - The school will ensure that AT devices or services, or both, are made available if required as part of the child's special education, related services, or supplementary aids or services. On an individualized basis, the use of school-purchased or leased AT devices in the child's home or other setting are required if the child's IEP Team decides that the child needs access to those devices in order to receive a free

appropriate education.

**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.

**Diploma Options** - The diploma that a child works toward will determine the course of study for the child. This should be fully and thoroughly discussed during the IEP meeting. In Virginia, there are several options for students and families to consider when thinking about graduation.

Diplomas options include:

- Advanced Studies diploma;
- Standard diploma;
- Applied Studies diploma (As of July 1, 2015, state legislation eliminated the term “Special Diploma”. In lieu of this language, the term “Applied Studies Diploma” will be used. This diploma is available to students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas.);
- General Achievement Adult High School (GAAHSD) Program (GAD); and
- In addition to these diplomas, there are certificates that may be earned, for example, the General Educational Development Certificates and the Certificate of Program Completion.

The details about all the diplomas are on the VDOE website under [Graduation Requirements](#).

It is important for a parent to know when their child was *a first time ninth grader* in order to find the detailed credit requirements for both an advanced studies and standard diploma.

**Standard credits** are earned by passing a class. **Verified credits** are earned by passing the class and an end of course (EOC) test. Generally, this is the standards of learning (SOL) test.

For students with disabilities (IEP and 504), **credit accommodations** are available, if eligible, as alternate pathways to the standard diploma. Detailed information is available through the VDOE website [Credit Accommodations for Students with Disabilities](#).

The State Board of Education has approved a list of **substitute tests** that can be used instead of the EOC SOL test. This list is found on the VDOE website at [Substitute Tests for Verified Credit](#).

**Disability Harassment** - The school will ensure that a child is not harassed because of his or her disability.

**Extended school year (ESY) services** - consist of special education and related services

provided beyond the normal school year or after school;

- According to the child's IEP;
- At no cost to the parent; and
- According to state standards.

The "Extended School Year Services Technical Assistance Resource Document," revised December 2007, or refer to it on the VDOE website under [Technical Assistance & Guidance](#).

**Hearing aids and certain other assistive technology devices** - The school will ensure that the hearing aids worn in school by children who are deaf or hard of hearing are functioning properly. The school will do routine checks to ensure that the child's hearing aids, or the external parts of any surgically implanted device, 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 a 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.

**Nonacademic and extracurricular services and activities** - The school will take steps, such as providing the **supplementary aids and services** determined necessary by a child's IEP Team, to provide the 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;
- The child is enrolled full time in a separate facility (where appropriate PE services will be provided); or
- The 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 the 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**. The child's placements and services must be based on the child's needs and not the child's disability.

**Residential placement** - If placement in a public or private residential program is necessary to provide special education and related services to the child, the program, including nonmedical care and room and board, must be provided at no cost to the parent.

**Transportation** - If the child is placed in an education program by the school, transportation to and from the program is provided at no cost to the parent if:

- Such transportation is necessary for the 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 the child's IEP requires specialized transportation. The school must ensure that the 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 the child's IEP Team decides that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.

**Rights at age of majority** - At least one year before the student reaches the age of majority (18), the IEP must include a statement that the parent and the student have been informed of the rights that will transfer from the parent to the student at age 18. The parent may, however, continue to make educational decisions for the adult child through 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](#).

**Placement** - The placement decision determines where the child's special education instruction will occur. This decision is made by the IEP Team, including the parent, each year and is based on the child's IEP. When making its placement decision, the IEP Team must consider the **least restrictive environment (LRE)** for the child.

Children with disabilities are educated with children without disabilities to the maximum extent appropriate.

This is considered the least restrictive environment. A child must not be placed in special classes or separate schools unless education in general education classes with supports and services cannot be achieved satisfactorily. Similarly, the 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 the child needs aids and services to help him or her to participate in these activities, the school must make those available.

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

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; and
- Instruction in hospitals and institutions, including state facilities.

NOTE: **homebound instruction** is not a special education placement and is available to all students, regardless of whether or not they have disabilities. Homebound 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.

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 the child's IEP are met in general education classes with similar-age children;
- Must be based on the individual needs of the 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.

An IEP Team/Children's Services Act team may determine a child will attend a private school or facility that is licensed, or has a certificate to operate from the VDOE, for educational reasons. If such a placement occurs, the placing school division must provide special education and related services as described in the child's IEP, including participation in state and division wide assessments, at no cost to the parent. The 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 the child with the participation of a representative from the private school. After the 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 the parent and by a representative from the placing school division in any decision affecting the IEP.

The *Children's Services Act* team can place a child in a private school or facility for non-educational reasons. In that case, the school division on that *Children's Services Act* team is responsible for revising the IEP, as necessary, to reflect this non-educational placement.

A parent may, at any time, place their child in a private school or home-school their child at their own expense. The school division is not required to pay for the cost of educating the child if the school division made free appropriate public education available to the child prior to the parent's decision.

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.

If a child is enrolled in a private school or is home-schooled, the parent has the right to request a due process hearing regarding child find procedures. The parent also may file a written **complaint** if he or she believes the school division violated the law regarding the provision of services to their **private school child with a disability**. Also, the parent has the right to refuse to have their child evaluated or reevaluated to determine if the child is, or continues to be, eligible for special education and related services. However, if a parent refuses to consent to the evaluation, or reevaluation, the 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.

When disagreements arise regarding the availability of a free appropriate public education and the cost for providing it, the parent 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 the parent for the full amount of placing the child in a private school if the hearing officer finds that:

- The school did not make a free appropriate public education available to the child in a **timely manner**; and
- The private placement is the appropriate placement for the child.

A hearing officer may reduce or deny a request for reimbursement unless the parent informs the IEP Team at the most recent meeting that he or she is rejecting the placement proposed by the school and states the concerns and the intent to enroll the child in a private school at public expense, or the parent gives notice of this information to the school at least ten business days before removing the child from the public school. A hearing officer may also reduce or deny the full reimbursement if the parent did not make the child available for evaluation or if the parent 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 the child;
- The school prevented the parent from providing notice; or
- The parent did not receive information about this notice requirement.

## 5 Reevaluation

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

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

This group begins by looking at the information already available about the 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 the parent. If the parent thinks an additional assessment is needed to determine eligibility or the

child's educational needs, he or she must make the request for these specific purposes for the school to conduct the assessment.

The school may go ahead without the parent's informed written permission only if it has tried to get the parent's permission and the parent did not respond.

#### TIMELINE

A triennial reevaluation must begin in enough time for the process to be completed before the third anniversary of the date on which a 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.

The parent 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.

Before special education and related services for a child are discontinued, the school must evaluate the child.

As noted in the section on evaluation, this evaluation may be a review of information already available. However, no evaluation is needed if the child:

- Graduates with a standard or advanced studies high school diploma; or
- Reaches his or her twenty-second birthday.

The parent must be provided notice that special education and related services will end when the 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 the child is no longer a child with a disability who needs special education and related services; and
- The parent gives consent in writing.

The school will give the parent notice of this decision.

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

If the parent changes his or her mind, or withdraws consent in writing, for their child to continue to receive special education and related services, the school must stop providing special education and related services of any kind for the child. The parent will receive a written notice from the school about this action. The child would no longer be protected by discipline

procedures for children with disabilities. The child would not be eligible for an Applied Studies 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 the child continues to receive special education and related services. The parent's action to withdraw consent is not retroactive, so it cannot undo any action that has already taken place.

## **Discipline and Students with Disabilities**

The school is required to inform parents and children of the local student conduct requirements. These are requirements for all students with or without a disability. In some cases, when a child with a disability breaks a rule, the school must follow additional procedures before the child is disciplined. These are explained below.

If a child's behavior limits his or her ability to learn, or the ability of other students to learn, the 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 the child's behavior; or  
Conducting a behavioral assessment to determine if a **Behavioral Intervention Plan (BIP)** is needed.

A child with a disability may be removed (suspended) for ten cumulative school days or less in a school year without the school having to conduct a **manifestation determination review (MDR)** or provide services. These are considered short-term removals. 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 this ten school day period, a child with a disability may be suspended for up to ten 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.

Subsequent short-term suspensions after the first ten-day suspension: School personnel are responsible to consult with the child's special education teacher and decide what services are necessary for the child to appropriately.

- Participate in the general curriculum; and
- Progress toward achieving the child's IEP goals.

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

If the 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 removals.

Long term removals: On the date the school decides to do a long-term removal, school personnel must notify the parent of the decision and provide a copy of the procedural safeguards notice.

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

- Decide what services are necessary for the child to appropriately participate in the general curriculum, progress toward achieving the goals outlined in the child's IEP, and to receive the services outlined in the child's IEP;
- If appropriate, complete a **functional behavioral assessment (FBA)** and develop a behavioral intervention plan (BIP) (including behavioral intervention strategies and modifications) to address the 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.

Any expulsion or any suspension for longer than ten consecutive school days 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.

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

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 ten 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.

NOTE: The purpose of the MDR meeting is not to determine whether the child violated the rules, but to determine if the student's behavior is a manifestation of their disability.

To decide whether or not the behavior was a manifestation of the disability, the IEP Team and other qualified people must:

- Consider all relevant information in the child's file, including:
  - His or her IEP;
  - Teacher observations; and

- Relevant information supplied by the parent.
- Determine if the behavior subject to disciplinary action was caused by or had a direct or substantial relationship to the child's disability; and
- Determine if the child's behavior was the direct result of the school's failure to implement the child's IEP.

If the child's IEP Team decides that:

- The school did not implement the child's IEP, the school must correct its error immediately.
- The child's disability did not cause the behavior the child will be disciplined with the same disciplinary procedures applied to a child without a disability in the same manner and for the same duration.
- The child's disability did cause the behavior then the child may not be removed from the current educational placement except through the IEP process. The IEP Team is also responsible for conducting a functional behavioral assessment, if the child does not already have one, and developing and implementing a behavioral intervention plan. If the child has a behavioral intervention plan, the IEP Team will review, and if appropriate, change the behavioral plan. The exception to this process is if the child has been placed in an Interim Alternative Educational Setting (IAES). Then school personnel may keep the child in the IAES until the 45-day placement is completed.

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

- The parent has expressed concern to school personnel in writing (or verbally if they cannot write or have a disability that prevents them from writing) that their child needs special education and related services;
- The parent has requested an evaluation to determine if the 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 exhibited by the child to the special education administrator of the school or to another member of the school division supervisory staff.

In these situations, the school:

- Must evaluate the child immediately to decide whether the child is eligible for special education and related services;
- Has the option of providing services to the child while the school is completing the evaluations;
- Has the option of keeping the child suspended or expelled while the school is completing the evaluations; and

- Must notify the parent if the school decides not to evaluate the child and provide the parent with a copy of the procedural safeguards, including the parent's rights to an expedited due process hearing to challenge the school's decision.

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

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

- A school has requested to evaluate a child for special education services before and the parent has refused;
- The child was found eligible for special education services before but the parent has not provided consent for those services; or
- The child has been evaluated for special education services before but determined to not be eligible for those services.

## **Parental Rights and Procedural Safeguards**

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

### **Prior Written Notice**

The school must provide notice to the parent/guardian that explains in writing:

- The school's proposal or refusal to act; and
- Parental rights.

The parent 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 the child or the provision of a free appropriate public education to the child.

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 a parent/guardian of a child with a disability has protection under the procedural safeguards;

- Information on how to get a copy of the procedural safeguards (if it is not included); and
- Sources for a parent/guardian to contact in order to get help in understanding the content of the notice.

The notice must be written in language understandable to the general public. In addition, it must be provided in the parent's **native language** or other mode of communication used unless it is clearly not feasible to do so. If the 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 in the native language or other mode of communication; and
- The parent understands the content of the notice.

Another type of notice is the procedural safeguards notice, which provides an explanation of parental legal rights. A copy of the procedural safeguards notice must be given only one time a school year, except that a copy must be provided to a parent/guardian at the following times:

- If the parent requests a copy;
- At the student's initial referral or parent/guardian 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 the student's placement through a disciplinary removal because the child violated the school's code of student conduct.

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

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;
- Access to the student's school records;
- Opportunities to present and resolve a complaint;
- The difference between due process and complaint procedures;
- The student'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 unilateral placement 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;
- Attorney fees; and
- State complaint procedures, including timelines and a description of how to file a complaint with the VDOE.

A copy of this notice, "Your Family's Special Education Rights; Virginia's Procedural Safeguards Notice," can be found on the VDOE website, at [Your Family's Special Education Rights; Virginia's Procedural Safeguards Notice](#) (PDF). Translations in some foreign languages are available from the VDOE.

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

### **Parental Participation in the Special Education Meetings**

A parent must be provided an opportunity to participate in meetings concerning their child's special education identification, evaluation, and educational placement and the provision of free appropriate public education to him or her. Therefore, the school must provide notice of a meeting early enough to ensure that the parent has an opportunity to participate. Examples of these meetings include eligibility determinations and IEP meetings.

The school also must ensure that the parent understands what is discussed at the meetings about their child's placement, including providing an interpreter for the parent if parent is deaf or does not speak English.

Notice of a meeting will 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, however, the position or role of personnel must be included. The parent, as well as the school, may invite other individuals to participate in the meeting who have knowledge or special expertise regarding the child. The person inviting another individual decides whether that individual has knowledge or special expertise. If the child is a preschool child that has been served under Part C but will now receive services from the local school (**Part B**), the parent may request that someone from the Part C program attend the child's first IEP 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.

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.

- You must inform the school before the meeting in writing if you plan to record the meeting. 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 recording device.
- 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.

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.

## **Parental Consent**

Giving permission, or written consent, is voluntary on the parent's part and may be withdrawn at any time. However, the parent must give written consent before the school:

- Conducts any evaluations which would be used to qualify the child for special education;
- Changes the identification of the child;
- Places the child for the first time in a program providing special education and related services;
- Changes the child's IEP or placement, including any partial or complete ending of special education or related services;
- Releases information from the child's school record to non-school personnel;
- Accesses the child's Medicaid or other insurance benefits; or
- Invites someone to an IEP meeting from a participating agency that is likely to provide or pay for secondary transition services.

The parent's 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 the child to determine appropriate instructional strategies to use with the child;
- The administration of a test used to measure progress on the child's goals if included in the IEP;
- A teacher's or related service provider's observations or ongoing classroom evaluations;
- The graduation of the child with a standard or advanced studies diploma; or

- A reevaluation if the parent fails to respond to a request for reevaluation and if the school can show that it has made reasonable attempts to get their consent.

If the parent refuses 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 the parental consent and they did not respond.

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

If the parent changes their mind and revokes the consent for their child to receive special education and related services, they must do so in writing. If the parent does, the school must stop providing special education and related services to the child. The parent will receive a written notice from the school about this action, but the school cannot take any action to require that their child continues to receive services. In addition, the following changes will occur:

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

If the parent changes their mind, or withdraws their consent, their 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.

NOTE: It is only necessary to obtain parental consent from one parent.

## **Confidentiality of School Records**

The law protects the confidentiality of a child's school records. There are three issues relating to confidentiality:

- Access to the child's records;

- Amendment (change) of the child's records; and
- The use of **personally identifiable** information.

The school must permit the parent to inspect and review any school records that relate to their 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 the parent's request before any meeting regarding an IEP or any due process hearing or resolution meeting involving their child.

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

- To receive 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 the parent has no authority under Virginia law governing such matters as guardianship, separation, and divorce;
- To inspect and review only information relating to their child if any record contains information on more than one child;
- To have someone the parent chooses 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 the parent cannot review them at school. No fee for researching or getting information will be charged. No fee for providing the parent with a copy of their child's IEP will be charged.

Parents have the right to request that the school change, or amend, their child's records if they believe the information in their child's records:

- Is inaccurate or misleading; or
- Violates their child's right to privacy or other rights.

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 the parent of the decision and of the parent's right to a hearing.

The school division, on request, must provide an opportunity for a hearing to challenge information in the **education records** to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If the hearing decides in the parent's favor, the school must change the information accordingly and inform the parent of the change in writing. If, however, if the hearing does decide for the

school division, then the school must inform the parent that they have the right to place a statement commenting on the information or setting out any reasons for disagreeing with the decision in their child's record.

Except for disclosure to law enforcement and judicial authorities under specific conditions, the school must get parental 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 for the child.

Personally identifiable information means information that includes the following:

- The name of the child, you, or other family member;
- The address of the 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 the child with reasonable certainty.

### **Procedures for Resolving Disagreements and Addressing Concerns**

Differences of opinion about what a student needs in terms of special education support sometimes arise between parents and other members of the team. The VDOE encourages parents and school administrators to work together to reach an understanding of mutual concerns and come to an agreement.

In the event that this cannot occur, the VDOE offers several options to addressing concerns, which include:

- Parent Ombudsman for Special Education
- IEP Facilitation
- Complaint
- Mediation
- Due Process Hearing

#### **1 Parent Ombudsman for Special Education**

What is an Ombudsman?

An Ombudsman is a person who serves as a designated neutral party who advocates for a fair process and provides confidential, informal assistance and support to parents, guardians, advocates, educators, and students with disabilities. The VDOE's Parent Ombudsman for Special Education serves as a resource to parents in non-legal special education matters. You may call or

write the VDOE parent ombudsman at any of the following:

- Telephone: 1 (800) 422-2083 (voice)
- Telephone: 1 (804) 371-7420
- Email: [specialeducationombudsman@doe.virginia.gov](mailto:specialeducationombudsman@doe.virginia.gov)
- Website: [Information about the Special Education Parent Ombudsman](#)

## 2 Facilitated IEP

### [Information on Facilitated IEPs](#)

What is a Facilitated IEP Meeting?

IEP meeting facilitation is becoming a recognized strategy for improving the effectiveness and efficiency of IEP meetings. The purpose of the facilitation process is to develop and sustain collaborative relationships between team members and to preserve and maintain a productive relationship between families and schools. A facilitated IEP meeting is one in which a trained facilitator assists members of the team in developing or reviewing a student's IEP and addressing differing opinions. The focus of a facilitated IEP meeting is on the present and future needs of the student. Facilitated IEP meetings allow team members to focus on the student's education in a collaborative and respectful manner.

The Facilitator's Role

A facilitator supports the team while focusing attention on the process of the meeting. The role of the facilitator is to assist team members in communicating effectively in order to reach decisions that are in the best interest of the student. The facilitator is not a member of the IEP Team or an advocate for any person on the team. His/her responsibility is to the whole team rather than an individual. He/she will not offer advice, suggestions, solutions, or legal interpretation.

What do I gain?

Early positive **collaboration** can reduce the need for resolution meeting, administrative complaints, mediation, and due process hearings, thereby saving time and money and reducing the emotional impact on all team members.

At a facilitated IEP meeting, you can expect:

- A meeting agenda that is developed collaboratively and inclusive of all concerns.
- Ground rules that provide structure and focus for the meeting.
- A facilitator who treats all parties fairly and with respect.
- A focus on listening for the purpose of understanding.

When should I request facilitator?

When the IEP Team process proves difficult or ineffective at developing an IEP acceptable both to the parents and the rest of the team.

### 3 Mediation

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

Mediation is conducted by a qualified and impartial mediator who is selected from a list maintained by the VDOE. The mediator is 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; and
- The mediator must not have a professional or personal conflict of interest.

The mediation process must meet certain conditions:

- Mediation must be voluntary on the part of both the school and the parent.
- Mediation must not be used to deny or delay a parent's right to a due process hearing or any other rights parents 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 asked to sign a confidentiality pledge before the beginning of the mediation process.
- If the parent chooses not to use the mediation process, the school may establish procedures to request the parent to meet at a time and location convenient to the parent, with a qualified, neutral person. The purpose of this meeting is to explore the benefits of (and encourage the parent to use) the mediation process. However, the school may not deny or delay the parent's right to a due process hearing if the parent chooses not to participate in this meeting.
- The VDOE pays for the cost of mediation.

For mediation information, refer to [Information on Special Education Mediation](#).

## 4 Complaint Process

A complaint is generally an expression of some disagreement with a procedure or a process regarding special education programs, procedures, or services. A formal complaint is considered a request that this division investigate an alleged violation of a right of a parent and/or child with disabilities who is eligible, or believed to be eligible, for services based on federal and state laws and regulations governing special education.

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 (complaints received via email will be considered as received with an electronic signature);
- The facts on which the statement is based;
- Contact information for the person filing the complaint and the name of student, address of residence for the child, and name of the school the child is attending;
- All relevant documents and supporting information; and
- Proposed resolution of the problem to the extent known and available to the parent.
- A copy of the complaint must be sent to both the VDOE and the school division at the same time.

Within seven business days, the investigator will classify the document as an inquiry or as complaint.

- An inquiry is a correspondence that does not allege a specific violation of special education laws and regulations or does not contain the required filing elements of a complaint (listed above).
- If the issue presented in the correspondence is determined to be appropriate for a complaint investigation, the investigator issues a Notice of Complaint (INIT).

### Notice of Complaint (INIT)

The Notice of Complaint outlines the issues raised in the complaint and the applicable state and/or federal special education regulations involved. It is issued to the person who made the complaint (complainant), the local school division superintendent, and director of special education, along with a copy of the Complaint Resolution Procedures and all supporting documentation submitted by the complainant. The timeline of the complaint is also included in the Notice of Complaint.

Once the parties receive the Notice of Complaint:

1. Early Resolution System: The school division has ten business days to provide a formal response or to resolve the issues through the Early Resolution System (ERS). ERS may be approached in one of two ways:
  - The school division may meet with the parents to address the issues raised in the complaint and attempt to resolve the issues; or
  - The parties may request mediation.
  
2. Complaint Response: If the school division and the parents are unable to resolve issues through ERS, the school division's response to the complaint is due. The school division must:
  - Submit a written response to the complaint, submit documentation in response to the issues and the requirement of documentation cited in the Notice of Complaint, and provide a copy of the response and documentation to the complainant at the same time as they are sent to the investigator.
  - No later than ten business days after the school division's response to the complaint is received by the investigator, the parent and the school division may submit additional information, either orally or in writing, about the allegations in the complaint.
  
3. Complaint Investigation: Upon receiving the required response and documentation, the investigator will:
  - Review all documentation submitted by the parent and the school division, visit the school division for an on-site review, if necessary, and determine whether the school division complied with procedural requirements outlined in state and/or federal regulations.

The investigator will then issue a Letter of Findings (LOF). The LOF will detail whether the school division is in compliance or non-compliance with all applicable regulations. A copy of this document will be sent to the parent and to the school division.

- "Compliance" - If the school division is found in compliance, the complaint file will be closed unless there is an appeal. No corrective action will be due.
- "Non-Compliance" - If the school division is found in non-compliance, the LOF will specify any corrective action due and the date for its completion.

Upon completing its investigation, VDOE's Office of Dispute Resolution and Administrative Services (ODRAS) issues a Letter of Findings (LOF). If either the parent or the school disagrees with the LOF, an appeal may be filed within 30 calendar days. If an appeal is filed, any Corrective Action Plan (CAP) that was ordered as part of the LOF is put on hold until the conclusion of the appeal.

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;
- Training;
- The awarding of monetary reimbursement;
- Other corrective action appropriate to the needs of the child; or
- Other corrective action as it applies to services for all children with disabilities.

How long do I have to file a complaint?

The allegations in a complaint must be based on an action that occurred not more than one (1) year prior to the date when ODRAS receives the complaint.

#### TIMELINE

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

For further information on complaint procedures, refer to: [Information on Filing a State Complaint](#).

The [State Complaint Form](#) is available on the VDOE website.

## 5 Due Process Hearing

Due Process uses an administrative hearing process before a hearing officer to resolve disagreements over such issues as related to a child's eligibility for special education and related services, evaluation of a child with a disability, appropriateness of a child's services and/or placement, or any other matter under a free appropriate public education, including some disciplinary matters.

The parent and the school division both 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 the parent and the school division and will then issue a decision based on the evidence and the law. Parties filing due process should be aware that federal timelines apply and will begin to run as soon as the case is filed.

The Supreme Court of Virginia maintains a list of independent hearing officers who hear administrative cases (much like a judge). The hearing officers on this list who have been certified to hear special education cases are attorneys with knowledge of special education law, who are appointed to due process hearings on a rotating basis by the Supreme Court of Virginia. The hearing officers are trained by the Supreme Court of Virginia and by the VDOE, which trains the

hearing officers on special education law, monitors the hearing process, and analyzes the hearing officers' decisions. However, the hearing officer is the party with decision-making authority in due process cases.

A parent may request a due process hearing if the parent disagrees with their child's identification, evaluation, or educational placement, or the provision of a free appropriate public education.

In addition, a school division has the right to initiate:

- A due process hearing if the parent refuses to give consent for an action that requires parental consent, except that a school may not request a hearing to obtain parent consent for the initial provision of special education and related services to their child; or
- An expedited hearing if the school believes that maintaining the child's current placement is substantially likely to result in injury to the 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 must notify the parent in writing.

Certain types of disciplinary cases are considered expedited due process hearings and a faster timeline for decision applies in these cases.

For a case to be expedited, the parent disagreement must relate to:

- A decision that their child's behavior that violated the student code of conduct was not a manifestation of the student's disability;
- A decision that short-term removals do not constitute a pattern; or
- Any placement decision under the disciplinary procedures.

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 division. The notice of the request must typically address a problem or action that the party knew or should have known about no more than two years before the request (this is called the "statute of limitations"). There are limited exceptions to the two-year statute of limitations (i.e., if the school division misrepresented that it resolved the problem that forms the basis of the complaint or if the school division withheld information the IDEA requires to be provided to the parent). The written request for hearing ("notice" or "due process complaint") 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;
- A description of the 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 the parent at the time the parent prepares the notice.

If the notice (due process complaint) 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 five calendar days. If the hearing officer decides that the notice is insufficient, he or she may offer the parent an opportunity to change the notice. If the parent does not change the notice, the due process hearing will be dismissed by the hearing officer.

The school division may also file a Motion to Dismiss the case for other reasons (for example, if the complaint is about an issue that does not relate to special education and over which the hearing officer does not have the jurisdiction, or authority, to hear the case).

During the first 30 days after the notice is filed, there is an opportunity for the parties to resolve the dispute through continued discussion. This time period is called the resolution period and the hearing will not be conducted during the resolution period. During this period, the school division is required to convene a meeting called the “resolution session” or “resolution meeting” within 15 days of the parent filing a request for due process.

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. The resolution session will include:

- The parent;
- Relevant members of the 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 the parent's attorney also attends.

The school division may not bring an attorney to the resolution meeting unless the parent is accompanied by an attorney.

The parent and the school division may waive the resolution meeting if both parties agree in writing to waive it. The parties may also agree to substitute mediation; this means the parties would go to mediation instead of a resolution meeting, but it would satisfy the requirement to attend a resolution meeting. If the school division is the party who filed due process, the school division is not required to schedule a resolution meeting.

If the school division fails to hold the resolution meeting, the parent may ask the hearing officer to end the resolution period early and begin the due process hearing timeline. If the school division is unable to get the parent to participate in a resolution meeting after making reasonable

efforts to schedule one, the school division may ask the hearing officer to dismiss the parent's due process complaint.

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 the parent and the school will begin, unless:

- The parent and the school agree not to hold a resolution session. If so, the 45-day period will begin.
- The parent does not attend the resolution session. If so, after the 30-day resolution period, the school may ask the hearing officer to dismiss the parent request for a hearing.
- The school does not convene the resolution session on time. If so, the parent may request that the hearing officer begin the 45-day period.
- The parent and the school division agree in writing that a resolution is not possible. If so, the 45-day period will begin.
- The parent and the school agree to use the mediation process. If so, the 45-day period will not begin until either the parent 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 ten school days after the hearing.

#### 1. The Parent's Responsibilities

Before the due process hearing, the hearing officer will schedule pre-hearing conferences to discuss concerns about the hearing and schedule hearing dates. The parent 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.

The parent 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.

## 2. The Parent's Rights

During the hearing process, the parent has 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.

The parent 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.

[Information on Due Process](#) can be found on the VDOE website.

## Timelines

### Child Find

#### 1. 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.

#### 2. School Based-Team

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

## Special Education Process

### 1. 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:

- The parent repeatedly fails or refuses to make the child available to be evaluated; or
- The 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.
- 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 three 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 the 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.
- The parent 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.

### 2. Eligibility Determination

- A written copy of the evaluation report must be made available to the parent at least two 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 the parent at the eligibility meeting or immediately following the meeting, but no later than ten days after the eligibility meeting.

3. Individualized Education Program (IEP)
  - 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 the child is still eligible for special education services, the IEP must be developed within 30 calendar days if the child's IEP Team determines that changes to the IEP are needed, or if the parent requests that a new IEP be developed.
  - Following a child'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 the child's eligibility. A school division or a parent can initiate a due process hearing when an agreement cannot be reached.
  - A copy of the child's IEP must be provided to the parent at no cost at the IEP meeting, or within a reasonable period of time, not longer than ten calendar days after the meeting.

## **School Records**

The school must respond to a parent's request for access to their 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**

- 1 Complaint
  - The VDOE must resolve a written, signed complaint within 60 calendar days of its receipt, unless exceptional circumstances exist, or unless the parent and the school agree to extend the time limit so the parties may participate in mediation.
  - The parent or the school may file an appeal within 30 days of the VDOE decision.
- 2 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 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 five 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 ten school days after the hearing.
- The parent 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.

## **Additional References and Resources**

You may also find information regarding special education and other education issues by referring to the [United States Department of Education](#) website or by calling 1 (800) USA-LEARN; or 1 (800) 872-5327.

The Virginia Department of Education (VDOE) has a [Special Education Parent Ombudsman](#) who provides assistance and information on special education. You may call or write the VDOE parent ombudsman at:

Address: Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120

Telephone: 1 (800) 422-2083 (voice)

Email: [specialeducationombudsman@doe.virginia.gov](mailto:specialeducationombudsman@doe.virginia.gov)

## **Additional State Resources**

- [Virginia Family Special Education Connection](#)
- [Virginia Training and Technical Assistance Centers](#)
- [Center for Family Involvement \(CFI\)](#) at the Partnership for People with Disabilities at Virginia Commonwealth University (VCU)
- [Parent Education Advocacy and Training Center \(PEATC\)](#)
- [I'm Determined](#)
- [Center on Transition Innovations](#)
- [State Special Education Advisory Committee](#)
- [Critical Decision Points for Families of Children with Disabilities](#)
- [Legal Advocacy Groups and Resources for Special Education](#)

## Acronyms and Abbreviations

<b>ADA</b>	Americans with Disabilities Act
<b>APE</b>	Adaptive Physical Education
<b>ASD</b>	Autism Spectrum Disorder
<b>AT</b>	Assistive Technology
<b>BIP</b>	Behavioral Intervention Plan
<b>CFR</b>	Code of Federal Regulations
<b>CSA</b>	Children's Services Act
<b>CSB</b>	Community Services Board
<b>DBVI</b>	Virginia Department of Blind and Visually Impaired
<b>DB</b>	Deaf-blindness
<b>DD</b>	Developmental Delay
<b>DSM-V</b>	Diagnostic & Statistical Manual
<b>ED</b>	Emotional Disability
<b>EI</b>	Early Intervention
<b>ESL</b>	English as a Second Language
<b>ESY</b>	Extended School Year
<b>FAPE</b>	Free Appropriate Public Education
<b>FAPT</b>	Family Assessment Planning Team
<b>FBA</b>	Functional Behavioral Assessment
<b>FERPA</b>	Family Educational Rights and Privacy Act
<b>FOIA</b>	Freedom of Information Act
<b>HI</b>	Hearing Impairment
<b>HIPAA</b>	Health Insurance Portability and Accountability Act of 1996
<b>IAES</b>	Interim Alternative Education Setting
<b>ID</b>	Intellectual Disabilities
<b>IDEA</b>	Individuals with Disabilities Education Act
<b>IDEIA</b>	Individuals with Disabilities Improvement Act of 2004 (otherwise called IDEA)
<b>IEE</b>	Independent Educational Evaluation
<b>IEP</b>	Individualized Education Program
<b>IFSP</b>	Individual Family Service Plan
<b>IHO</b>	Impartial Hearing Officer
<b>IQ</b>	Intelligence Quotient
<b>LAC</b>	Local Advisory Committee (otherwise called SEAC)
<b>LD</b>	Learning Disabilities
<b>LEA</b>	Local Educational Agency (School division)
<b>LEP</b>	Limited English Proficiency
<b>LRE</b>	Least Restrictive Environment
<b>MD</b>	Multiple Disabilities
<b>MDR</b>	Manifestation Determination Review
<b>NIMAC</b>	National Instructional Materials Accessibility Center

<b>NIMAS</b>	National Instructional Materials Accessibility Standard
<b>OCR</b>	Office for Civil Rights (at USED)
<b>OHI</b>	Other Health Impaired
<b>OI</b>	Orthopedic Impairment
<b>O&amp;M</b>	Orientation & Mobility Services
<b>OSEP</b>	Office of Special Education Programs
<b>OSERS</b>	Office of Special Education and Rehabilitative Services
<b>OT</b>	Occupational Therapy
<b>PLOP</b>	Present Level of Performance
<b>PRC</b>	Parent Resource Center
<b>PT</b>	Physical Therapy
<b>PWN</b>	Prior Written Notice
<b>RTI</b>	Response to Intervention
<b>SEA</b>	State Education Agency (Virginia Department of Education)
<b>SEAC</b>	Special Education Advisory Committee
<b>SLD</b>	Specific Learning Disability
<b>SLI</b>	Speech Language Impairment
<b>SOL</b>	Standards of Learning Test
<b>SOP</b>	State Operated Program
<b>SPED</b>	Special Education
<b>SSEAC</b>	State Special Education Advisory Committee
<b>T/TAC</b>	Training/Technical Assistance Center
<b>USED</b>	United States Department of Education
<b>VAAP</b>	Virginia Alternative Assessment Program
<b>VDOE</b>	Virginia Department of Education
<b>VI</b>	Visual Impairment
<b>VSEP</b>	Virginia Substitute Evaluation Program

For additional terms in special education refer to the [Center for Parent Information & Resources: Disability & Special Education Acronyms.](#)

## **Glossary**

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

**Accommodations** – **Academic** or behavioral adjustments that assist a student in participating in the general education curriculum and does not change what is being measured or taught, only how it is delivered.

**Age of eligibility** – 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 age 22 on or before September 30 (two to 21, inclusive) in accordance with the *Code of Virginia*. A child with a disability who turned 22 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** – 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** – Refer to the definition for "consent."

**Alternate assessment** – The state assessment program, and any school division wide 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)) (These students will typically participate in VAAP).

**Alternative assessment** – 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.  
(These students will use a test that assesses knowledge of grade appropriate curriculum).

**Assistive technology device** – 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** – 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).

- The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- 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.

**Audiology** – 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** – 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 (BIP)** – 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** – 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** – 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 (CTE)** – 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** – The number of students served by special education personnel.

**Change in identification** – A change in the categorical determination of the child's disability by the group that determines eligibility.

**Change in placement or change of placement** – 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)  
(34 CFR 300.536).

1. A removal of a student from the student's current educational placement is for more than ten consecutive school days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten 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.

**Charter schools** – 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** – Any person who shall not have reached his/her 22nd birthday by September 30 of the current year.

**Child Find** – The process whereby school divisions locate, identify, and evaluate students in Virginia, regardless of citizenship or immigration status, who need special education and related services. This process includes birth through age 21 who (i) are highly mobile, such as migrant and homeless children; (ii) are wards of the state; (iii) attend private school, receive home instruction, or are home-tutored; (iv) are suspected of having a disability and in need of special education, even though they are advancing from grade to grade; and (v) are under age 18, who are suspected of having a disability and in need of special education and related services, and are incarcerated in a regional or local jail in the school division for ten or more days.

**Child with a disability** – A child evaluated in accordance with the provisions of this chapter as having an intellectual disability, are deaf or hard of hearing, have 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, 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)).

***Children's Services Act (CSA)*** – The *Children's 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*).

**Collaboration** – Interaction among people as they work toward a common goal. Teachers do not necessarily have to engage in co-teaching in order to collaborate.

**Complaint** – Generally an expression of some disagreement with a procedure or a process regarding special education programs, procedures, or services. A formal complaint is considered a request that this division investigate an alleged violation of a right of a parent and/or child with disabilities who is eligible, or believed to be eligible, for certain services based on federal and state laws and regulations governing special education.

**Consent** (34 CFR 300.9) – 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.

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.).

**Consideration** – The process by which the IEP Team examines and determines if the student requires instruction and/or support in specific areas.

**Correctional facility** – 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*) students for some or all of the school day in order to combine their expertise to meet student needs.

**Counseling services** – 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)).

**Deaf-blindness** – 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** – A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects the child's educational performance. (34 CFR 300.8(c) (3)).

**Developmental delay (DD)** – 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 effect 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** – 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** – The process for resolving a dispute between the family and the public school related to the identification, evaluation, or placement of a child with disabilities.

**Due process hearing** – 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.

**Dyscalculia** – The inability to understand and remember mathematical concepts, rules, formulas, basic computation skills, and sequence of operations. Students with dyscalculia have poor understanding of number concept and the number system and skills that are the foundation of higher order mathematical skills.

**Dysgraphia** – According to the International Dyslexia Association, dysgraphia is the condition of impaired letter writing by hand, that is, disabled handwriting. Impaired handwriting can interfere with learning to spell words in writing and speed of writing text. Children with dysgraphia may have only impaired handwriting, only impaired spelling (without reading problems), or both impaired handwriting and impaired spelling.

**Early identification and assessment of disabilities in children** – 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)).

**Educational placement** – 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).

**Education record** – 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 service agencies and other public institutions or agencies (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** – 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 (ED)** – 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** – 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** – 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).

**Extended school year services (ESY)** – 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 financial assistance** – 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 (FAPE)** – 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 (FBA)** – 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** – 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** – 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)).

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

**Homebound instruction** – 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** – 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** – 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.
5. The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

**Home tutoring** – 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*).

**Impartial special education hearing officer** – 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** – The plan developed by the local education agency (LEA) designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.

**Independent educational evaluation (IEE)** – 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 (IEP)** – 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 (IEP) Team** – 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 - 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** – 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** – Refer to "Consent."

**Initial placement** – 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 (ID)** – The definition formerly known as "mental retardation" and means significantly sub-average 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, 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)** – 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** – The provision of special education to children with disabilities for less than 50 percent 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** – Provision of special education and related services to children with disabilities for 50 percent 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 (LEA)** – 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 refers to those hospital placements that are not expected to change in status or condition because of the child's medical needs.

**Manifestation determination review (MDR)** – A process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

**Mediation** – A voluntary dispute resolution process in which an impartial third party (a trained mediator) assists parents and school personnel in discussing and understanding each other's views in a dispute. The mediator helps everyone participate in a productive discussion by encouraging new or collaborative thinking and problem solving. A successful mediation results in the participants coming up with mutually agreed upon solutions.

**Medical services** – 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)).

**Modifications** – Specially designed instruction changed in terms of the goals, expectations, level of performance or content.

**Multiple disabilities** – 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 (NIMAC)** – 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,
3. 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
4. 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 (NIMAS)** – 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** – 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 (OT)** – 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** – 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** – 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 (OHI)** – 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 or paraeducator** – 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 –

- Biological or adoptive parent<sup>2</sup>;
- Foster parent, if the biological or adoptive parent's educational rights have been terminated or under specific circumstances;
- Guardian, authorized to act as the child's parent or to make educational decisions (but not a guardian ad litem [GAL]);
- Person acting in place of a parent (such as a grandparent, stepparent, or other relative) with whom the child lives, or a person legally responsible for the child's welfare;
- Surrogate parent who is appointed by the school division if no parties can be identified who meet the definition of parent or who are willing to act as a parent;
- An emancipated minor or validly married minor may also assume the responsibilities of a parent; and
- In the case of unaccompanied homeless youth, a temporary surrogate may act as the parent until a surrogate can be appointed.

**Parent counseling and training** – Providing assistance to parents in understanding the special needs of their child, providing parents with information about child development, and helping

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<sup>2</sup> Either parent may act as the parent, unless there is evidence of a legally binding instrument, state law or court order that has terminated a parent's parental rights. Both parents should receive notices unless this is the case.

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)).

**Part B** – The section of the federal special education regulations that addresses pre-school and school-aged children with disabilities.

**Part C** – The section of the federal special education regulations that addresses children birth through age two.

**Participating agency** – A state or local agency (including a *Children's 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** – 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. 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 therapy** – 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))

**Prior written notice (PWN)** – The school must give the parent written notice when it initiates or proposes to change the identification, evaluation, or educational placement of their child or the provision of a free appropriate education (FAPE) to their child or if the school refuses to initiate or change the identification, evaluation, or educational placement of their child or the provision of FAPE.

**Private school for children with disabilities** – 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 *Children's Services Act* team in accordance with 8VAC20-81-150. (34 CFR 300.130).

**Procedural Safeguards** – This document identifies key parts of the *Individuals with Disabilities Act* (IDEA) a federal law governing the education of students with disabilities.

**Program** – The special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

**Psychological services** – 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** – 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** – 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** – 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 300.34(c)(11)).

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

**Reevaluation** – Completion of a new evaluation in accordance with this chapter. (34 CFR 300.303).

**Rehabilitation counseling services** – 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** – 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** – Any day, including a partial day, which 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** – 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** – 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** – 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** – 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.).

**Services plan** – 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** – Those services provided by a school social worker 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.
6. A local educational agency, in its discretion, may expand the role of a school social

worker beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.

**Special education** – 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** – 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** – 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 (SLD)** – 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** – 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 (SLP) services** – 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** – The state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

**State educational agency (SEA)** – The Virginia Department of Education. (34 CFR 300.41).

**State Operated Programs** – 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** – 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** – 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** – 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.
3. 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 (TBI)** – An acquired injury to the brain caused by an external force or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments, 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** – 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 (VSDB)** – 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** – 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** – 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."

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