



**SCOTT COUNTY PUBLIC SCHOOLS - 084**

**SPECIAL EDUCATION**

**POLICIES & PROCEDURAL HANDBOOK**

**2023-2024**

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## **SCOTT COUNTY PUBLIC SCHOOLS FOREWORD**

**Scott County pays special attention to the needs of its children with disabilities. There has been a consistent plan to develop and implement a continuum of programs that appropriately addresses the unique needs of disabled learners. Scott County Schools strives to educate all students in the “mainstream”; however, we recognize the necessity to incorporate a variety of special programs to service the wide range of disabilities.**

**Scott County Schools is committed to a policy of nondiscrimination in relation to race, color, sex, age, religion, disability, natural origin, marital status, or physical disability and offers the following assurances:**

- **Scott County Schools will make a free appropriate public education (curricula and extra-curricula activities) available to each student with disabilities, ages 2 to 21, inclusive, residing in Scott County.**
- **Scott County Schools will ensure that all students and youth, ages 2 to 21, inclusive, residing in Scott County who are disabled and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program.**
- **Scott County Schools will ensure that students with disabilities and their parents, guardians, or surrogates are guaranteed procedural safeguards in the process of identification, evaluation, and educational placement.**
- **It is the policy of Scott County Schools, to the maximum extent appropriate, to educate disabled students and youth with students and youth that are not disabled.**
- **Scott County Schools will ensure that confidential records of disabled students shall be properly maintained.**
- **Scott County Schools will ensure that testing and evaluation materials utilized for the purpose of classification and placement of students with disabilities are selected and administered so as not to be racially or culturally discriminatory.**
- **Scott County Schools will ensure that an individualized education program will be maintained for each student with disabilities enrolled in a special education program.**
- **Scott County Schools will provide a comprehensive system of personnel development, which will include the training of general and special education instruction and support personnel, related to the needs of the disabled.**
- **It is the policy of Scott County Schools to appoint, when appropriate, surrogate parents to act as advocates to serve the educational interests of students and youth, ages 2 to 21, inclusive, who are suspected of being or have been determined to be disabled.**

- Scott County Schools will ensure that there is ongoing consultation with the parents or guardians of students with disabilities.
- It is the goal of Scott County Schools to provide an educational opportunity for all children with disabilities, from the ages of 2 to 21, inclusive, including vocational education, career education, and pre-vocational education.
- It is the policy of Scott County Schools to allow all students with disabilities to participate in all local and state tests.
- It is the policy of Scott County Schools to provide an ongoing evaluation of its Special Education Program.

The language in red represents “Regulations Governing Special Education Programs for Children with Disabilities in Virginia” as it was revised in August of 2009.

Future upgrades to SCS local policies and procedures made in accordance with the IDEA '04 will be made in PURPLE and such language will supersede any conflicting language which is otherwise included in the division’s policies and procedures document.

For the purpose of this document:

SCS refers to Scott County Schools

SEA or VDOE refers to Virginia Department of Education

LEA refers to Local School Division

SEA and/or LEA refers to Public Agency (depending on the context)

Parent(s) may interchange with guardian, family members the child resides with, such as; grandparent, aunt, uncle, etc., foster parent depending who the child resides with and whether parent rights have been terminated.

## **FOREWORD**

The reauthorization of the Individuals with Disabilities Education Improvement Act, December 3, 2004, (IDEA '04) and its implementing federal regulations, October 13, 2006, prompted the need to revise Virginia's special education regulations. Input was received from a Stakeholders Group that included school personnel, parents, consumers, professionals, and members of the State Special Education Advisory Committee. The Virginia Department of Education adhered to the requirements of Virginia's Administrative Process Act in the development and review of these regulations.

The Virginia Department of Education also relied on the federal regulations, at 34 CFR § 300.199 (a) and (b) for additional guidance in the formulation of these regulations. Under this federal mandate, each state shall:

- 1) Ensure that any State rules, regulations, and policies relating to the IDEA '04 conform to the requirements of the federal statute and regulations;
- 2) Identify in writing to local educational agencies located in the State and the Secretary of Education any such rule, regulation, or policy as a State-imposed requirement that is not required by the federal statute and regulations; and
- 3) Minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under the federal statute and regulations.

This federal regulation also requires that State rules, regulations, and policies under the IDEA '04 shall support and facilitate local educational agency and school level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards.

The regulations were adopted by the Board of Education on May 28, 2009 and became effective on July 7, 2009. The regulations include reference to the federal regulations, state statute, or state regulations that serve as the source of the requirements.

The Department of Education staff members are grateful to those persons who provided comment.

Copies of these regulations, including Braille copies, audio tapes, and large print versions are available at no cost from the Virginia Department of Education. Please forward your request to the Virginia Department of Education, P. O. Box

2120, Richmond, Virginia 23218-2120, or by calling 1-800-292-3820. Copies of these regulations are also available on the Virginia Department of Education's Web site at: [www.doe.virginia.gov/VDOE/dueproc](http://www.doe.virginia.gov/VDOE/dueproc).

## PREAMBLE

The Virginia Constitution delineates the General Assembly's responsibility for education: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth ..." (Article VIII, section 1). The *Code of Virginia* delineates the Commonwealth's responsibility for education of children with disabilities, as follows:

"The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities ..." (§ 22.1-214);

" 'Children with disabilities means those persons who are aged two to twenty one, inclusive ... are disabled as defined by the Board of Education, and ... need special education' (§ 22.1-213);

"Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system" (§ 22.1-7); and

"Each school division" shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with the regulations of the Board of Education" (§ 22.1-215).

These regulations set forth the requirements of the Board of Education regarding the provision of special education and related services to children with disabilities in the Commonwealth, reflecting both state and federal requirements. The regulations are applicable to all local school divisions, state-operated programs, the Virginia School for the Deaf and the Blind at Staunton, and private schools in the Commonwealth that provide special education and related services to children with disabilities.

In addition to these requirements, the following statutes and regulations are applicable to children with disabilities: all regulations promulgated by the Board of Education, provisions of the *Code of Virginia* (COV), the requirements of section 504 of the Rehabilitation Act of 1973 (as amended), the Americans with Disabilities Act, the Education Department General Administrative Rules (for

federal grant requirements), the Virginians with Disabilities Act, and the No Child Left Behind Act of 2001.

These requirements are based on the fundamental notion that special education and related services are to be designed to meet the unique educational needs of children with disabilities, provide educational opportunity in the general curriculum to the extent possible in accordance with each child's individualized education program, and prepare children with disabilities for opportunities in post-secondary education, employment, and independent living.

### **VAC 20-80-10. Definitions.** (The definitions in black are unique to SCS)

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

**"Academic achievement"** generally refers to a child's performance in academic areas, for example, reading or language arts , math, science, and history.

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

**"Age of eligibility"** means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. The definition refers to children who turn 22 after September 30 remaining eligible for FAPE for the remainder of the school year.

**"Age of majority"** means the age when the procedural safeguards and other rights afforded to the parent or parents of a student with a disability transfer to the student. In Virginia, the age of majority is 18.

**"Agree or agreement"** – see the definition for "consent."

**"Alternate assessment"** means assessment for children with disabilities who cannot participate in the state or division-wide assessment programs even with appropriate accommodations and modifications. 34 CFR § 300.138

**"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 CFR §300.5**

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

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

**"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent or parents as part of the regular education program.**

**"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes:**

- 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 rehabilitation of hearing;**
- 3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), 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 Spectrum Disorders”** - A child may be found eligible for special education and related services as a child with autism if there is an adverse effect on the child's educational performance due to documented characteristics of autism and the child has any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder, Childhood Disintegrative Disorder, or Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism. Children with a medical diagnosis of autism spectrum disorders must be found eligible for special education and related services under IDEA before an Individualized Education Program (IEP) is developed. Children who are suspected of having a disability should be referred to their local school division for evaluation and to initiate the process for determining eligibility.

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

**"Business day"** means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8 VAC 20-80-66

**"Calendar days"** means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or school holiday.

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

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

**"Caseload" means the number of students assigned to special education personnel.**

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

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

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

**A "change in placement" also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.**

**"Change in placement" or "change of placement," for the purposes of discipline, means: (34CFR 300.536)**

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

**"Chapter" means these regulations.**

**"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. COV §§ 221-212.5-22.1-212.15**

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

**"Child study committee" means a committee that enables school personnel, and nonschool personnel, as appropriate, to meet the needs of individual children**

who are having difficulty in the educational setting. The committee reviews existing data to make recommendations to meet children's needs and reviews the results of implementation of the recommendations. The child study committee may refer children for evaluation for special education and related services.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M.3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

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

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent or parents of a child who is eligible or believed to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. 34 CFR §300.662

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

"Consent" means:

1. The parent or parents or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's, parents', or eligible student's native language, or other mode of communication;
2. The parent or parents 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 or parents or eligible student understands that the granting of consent is voluntary on the part of the parent or parents or eligible student. 34 CFR § 300.500 (b) (1) the part of the parent(s) or eligible student and may be revoked any time.

- a. 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.).
- b. If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the local educational agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

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

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

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

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

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

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. 34 CFR § 300.24 (b) (2) Licensure Regulations for School Personnel (8 VAC 20-22))

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with

a blade of less than three inches in length. (18 USC § 930(g)(2); § 18.2-308.1 of the Code of Virginia)

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

"Deaf-Blindness" means hearing and visual impairments occurring at the same time, 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 § 300.7 (c) (2)

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. 34 CFR §300.7 (c) (3)

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

"Developmental Delay" means a disability affecting a child ages two through six, inclusive:

- 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;
- The delay is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
- The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct Services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. 34 CFR §300.147

"Due Process Hearing" means an administrative procedure conducted by an impartial 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 or parents and a local educational agency. A due process hearing involves the appointment of an impartial hearing officer who conducts the hearing, reviews evidence and determines what is educationally appropriate for the child with a disability. 34 CFR §300.507 (a)

"Dyslexia" is a language-based learning disability. Dyslexia refers to a cluster of symptoms, which result in people having difficulties with specific language skills, particularly reading. Students with dyslexia may experience difficulties in other language skills such as spelling, writing, and speaking. Dyslexia is a life-long status; however, its impact can change at different stages in a person's life. It is referred to as a learning disability because dyslexia can make it very difficult for a student to succeed academically in the typical instructional environment.

"Dysgraphia" affects one's ability to write.

"Dyscalculia" affects one's ability to work math.

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

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

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

"Educational service agencies and other public institutions or agencies" include: (34 CFR300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;
2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;

3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act as in effect prior to June 4, 1997.

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

"Emotional Disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

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

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

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

"Excess Costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting: (34 CFR 300.16)

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

**"Extended school year services" for the purposes of this chapter means special education and related services that:**

- 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 or parents of the child; and**
- 2. Meet the standards established by the Virginia Department of Education.**

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

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

**"Fort Blackmore Center of Excellence"- Fort Blackmore Center offers specialized instructional services for students ages 2-22 with the disability designations of developmental delays (DD), multiple disabilities (MD), autism (AUT), intellectual disabilities (ID) or other health impairment (OHI). Placement is through a referral process. This school is considered a Separate Public Day School as part of the continuum of special education services for students who are not able to demonstrate progress with appropriate accommodations and strategies in less restrictive educational settings (i.e., special education services in a special education setting in a general education school setting). Students attending Fort Blackmore Center of Excellence will have the opportunity to interact with nondisabled students but not on a daily basis. Most students who attend Fort Blackmore Center receive special education services primarily due to emotional and/or behavioral needs. The majority of the students also have special education needs specific to academic difficulties as well as deficits in social skills and executive functioning skills. Occasionally, students may be placed at Fort Blackmore Center due to the severity of behaviors through a Behavior Intervention Plan.**

**"Free appropriate public education" (FAPE) means special education and related services that:**

- 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 preschool, elementary school, middle school or secondary school education in the state; and**
- 4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.**

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



child with a disability or the learning of the child's peers. It includes a review of existing data or new testing data or evaluation as determined by the IEP team.

"Functional performance" generally refers to skills or activities that are not considered academic or related to a child's academic achievement; it is often used in the context of routine activities of every day living or extra-curricula activities.

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

"Hearing impairment" means an impairment in hearing, 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 §300.7 (c) (5)

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

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

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP must determine the delivery of services, including the number of hours of services. Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-180)

"Home instruction" means instruction of a child or children by a parent or parents, 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. COV § 22.1-254.1 of the code of Virginia.

"Homeless children" has the meaning given the term "homeless children and youth" in § 725 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC § 11431 et seq. and listed below: (34 CFR 300.19) The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

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

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

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

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

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

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

"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. 34 CFR § 300.50 2 (a) (3) (i)

"Individualized education program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs

of the child and what special education and related services are necessary to meet the needs. 34 CFR § 300.22

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

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

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who:

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

"Informed parental consent": see "Consent."

"Initial placement" means the first local educational agency placement in either a public school, state-operated program, or private school program for the purpose of providing special education or related services.

"Intellectual Disability" - A child may be found eligible for special education and related services as a child with an intellectual disability if there is an adverse effect on the child's educational performance due to documented characteristics of intellectual disabilities which are described as a significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Children must be found eligible for special education and related services under IDEA before an Individualized Education Program (IEP) is developed. Children who are suspected of having a disability should be referred to their local school division for evaluation and to initiate the process for determining eligibility.

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued speech/language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell and interpreting services for

children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Itinerant" means a qualified professional employed by the local school division who provides services in various locations to children with disabilities.

"Learning Disability" - Specific learning disabilities are heterogeneous in nature, often differing markedly from one person to the next. The Regulations Governing Special Education Programs for Children with Disabilities in Virginia (effective March 27, 2002) define the term as follows:

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

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

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

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

1. Who is aged 2 through 21;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or
3. Who:
  - a. Was not born in the United States or whose native language is a language other than English;
  - b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language

- other than English has had a significant impact on the individual's level of English language proficiency; or
- c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- 4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
  - a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;
  - b. The ability to successfully achieve in classrooms where the language of instruction is English; or
  - c. The opportunity to participate fully in society.

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

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

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

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

"Multiple Disabilities" - A child may be found eligible for special education and related services as a child with multiple disabilities if there is an adverse effect on the child's educational performance due to documented characteristics of multiple disabilities which are described as 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 (this term does not include deaf-blindness). Children must be found eligible for special education and related services under IDEA before an Individualized Education Program (IEP) is developed. Children who are suspected of having a disability should be referred to their local school division for evaluation and to initiate the process for determining eligibility.

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

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

**"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard established by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. (34 CFR 300.172)**

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

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

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

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

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

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate: 34 CFR §300.34 (c) (6)

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

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

"Other Health Impairment"- According to IDEA, "other health impairment" means having limited strength, vitality or alertness. This includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment and which adversely affects a child's educational performance.

Chronic or acute health problems that fall under "other health impairment"

<ul style="list-style-type: none"> <li>▪ Asthma</li> <li>▪ Hemophilia</li> <li>▪ Lead Poisoning</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tourette Syndrome</li> <li>▪ Attention Deficit/Hyperactivity Disorder</li> </ul>
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▪ Leukemia	▪ Diabetes
▪ Nephritis	▪ Epilepsy
▪ Sickie Cell Anemia	▪ Heart Condition

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

"Parent" means: (§ 20-124.6 and § 22.1-213.1 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

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



5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.
6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.
7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record and, thus, assumes responsibilities of "parent" under this chapter.
8. The local educational agency shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent under this section, and the local educational agency is entitled to rely upon the actions of the foster parent under this section until such time that the biological or adoptive parent attempts to act as the parent.

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

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. 34 CFR §300.340 (b)

"Peer reviewed research." There is no single definition because the review process varies depending on the type of information to be reviewed. Generally, it refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of information meets the standards of the field before the research is published.

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

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

"Physical education" means the development of:

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

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

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

"Private school children with disabilities" means children with disabilities enrolled by their parent or parents in private schools, other than children with disabilities who are placed in a private school by a local school division or Comprehensive Services Act team in accordance with 8 VAC 20-81-150. 34 CFR § 300.130

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

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including:

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, 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.
- 34CFR§300.34(c)(10)

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

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods which are likely to succeed in providing information to the public.

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

**"Recreation" includes:**

- 1. Assessment of leisure function;**
- 2. Therapeutic recreation services;**
- 3. Recreation program in schools and community agencies; and**
- 4. Leisure education. 34 CFR § 30.34 (c) (11)**

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

**"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. 34 CFR § 300.24 (c) (12)**

**"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting; 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; 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-Based Team”** – is a committee within each school that hears any case involving a student’s needs: bullying, grades, hygiene, behavioral issues, discipline, etc. This is a committee of professional teachers. The School-Based Team may make referrals for additional services/interventions in consultation with the parent.

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

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

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

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

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

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

"Sensory Disabilities" can involve any of the five senses, but for educational purposes, it generally refers to a disability related to hearing, vision, or both hearing and vision.

"Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or of environmental, cultural, or economic disadvantage.

"Speech-Language Impairment" - Speech-language impairments can impact the way a student communicates. Speech errors include errors when producing specific sounds that are not a result of normal development or language acquisition, dysfluency (stuttering), or motor speech issues. Students may also receive therapy for improving the understanding and use of spoken or written language, pragmatics, and meta-linguistic skills. Students with swallowing disorders or dysphagia can also receive services from speech-language pathologists in Virginia public schools.

Students must meet Virginia eligibility criteria to be found eligible for services as a student with a speech language impairment or can receive speech-language therapy as a related service if included in the student's IEP.

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

"Services Plan" a written statement that describes the special education and related services that Scott County Schools must provide to parentally-placed private school children with disabilities who have been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660; 34 CFR 300.34(c)(14))

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

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

"Special education" means specially designed instruction, at no cost to the parent or parents, 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: COV § 221-213; 34 CFR §300.39

1. Speech-language pathology services;
2. Vocational education; and
3. Travel training.

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

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

1. To address the unique needs of the child that result from the child's disability;
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. 34 CFR § 300.39(b) (3)

“Speech-Language Impairment” - Speech-language impairments can impact the way a student communicates. Speech errors include errors when producing specific sounds that are not a result of normal development or language acquisition, dysfluency (stuttering), or motor speech issues. Students may also receive therapy for improving the understanding and use of spoken or written language, pragmatics, and meta-linguistic skills. Students with

swallowing disorders or dysphagia can also receive services from speech-language pathologists in Virginia public schools.

Students must meet Virginia eligibility criteria to be found eligible for services as a student with a speech language impairment or can receive speech-language therapy as a related service if included in the student's IEP.

"Speech-language pathology services" means the following:

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. 34 CFR § 300.34 (c) (15)

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

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

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

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

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

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

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

- 1. Early childhood special education to the extent that those services are appropriate; or**
- 2. Other services that may be available, if appropriate. 34 CFR §303.124**

**"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: (34CFR 300.43)**

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

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

**"Transportation" includes:**

- 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. 34 CFR §300.34 (c) (16)**

**"Traumatic brain injury" means an acquired injury to the brain caused by an external physical 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. The term does not apply to brain**



injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. 34 CFR §300.8 (c) (12)

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

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). 34 CFR § 300.39 (b) (4)

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

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

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

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree. 34 CFR § 300.39 (b) (5)

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

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

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

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

## **Responsibilities of the State Department of Education**

### ***8VAC20-81-20. Functions of the Virginia Department of Education.***

The Virginia Department of Education (state educational agency) shall perform the following functions:

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to, children with disabilities who: (34 CFR 300.2 and 34 CFR 300.101)
  - a. Are migrant;
  - b. Are homeless;
  - c. Have been suspended or expelled from school, in accordance with this chapter;
  - d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8VAC20-81-110 I;
  - e. Are receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;
  - f. Are in state-operated programs; or
  - g. Are in public charter schools in accordance with the Code of Virginia.
2. Except as provided in 8VAC20-81-170 E 4 b (3), ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team. (34 CFR 300.112 and 34 CFR 300.300(b)(4)(ii))
3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities. (§ 22.1-215 of the Code of Virginia; 34 CFR 300.200)
4. Ensure that each local educational agency includes all children with disabilities including those students who are long-termed removed in all general Virginia Department of Education and division-wide assessment programs, including assessments described in § 1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at § 1412. (20 USC § 1412(a)(16)(A))
5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the areas served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education. (34 CFR 300.110)

6. Ensure that each educational program for children with disabilities administered within Virginia: (34 CFR 300.149(a))
  - a. Is under the general supervision of the persons responsible for educational programs for children with disabilities in Virginia; and
  - b. Meets the educational standards of the Virginia Department of Education. In carrying out these requirements with respect to homeless children, ensures compliance with the Mc Kinney-Ventro Act as it impacts the provision of special education and related services to children and the requirements of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.) are met.
7. Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools. (34 CFR 300.165)
8. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.199 and 34 CFR 300.129)
9. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to LRE requirements by: (34 CFR 300.119)
  - a. Ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements; and
  - b. Providing them with technical assistance and training necessary to assist them in this effort.
10. Ensure that the requirements for LRE are implemented by each local educational agency. If there is evidence that a local educational agency's placements are inconsistent with LRE requirements, the Virginia Department of Education shall: (34 CFR 300.120)
  - a. Review the local educational agency's justification for its actions; and
  - b. Assist in planning and implementing any necessary corrective action.
11. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed. (34 CFR 300.149, 34 CFR 300.151 and 34 CFR 300.507)
  - a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, special education hearing officers, and management and monitoring of hearings.
  - b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding alleged violations of the educational rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.
12. Establish and implement a mediation process in accordance with the Act. (§ 22.1-214 of the Code of Virginia; (34 CFR 300.506)
13. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure

- that each child with a disability placed in the school by a local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.129, 34 CFR 300.146 and 34 CFR 300.147)
- a. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
  - b. Provide copies of all Virginia regulations and standards; and
  - c. Provide an opportunity for these schools to participate in the development and revision of Virginia's regulations that apply to them.
14. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.149)
15. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. (34 CFR 300.167 through 34 CFR 300.169)
- a. Membership. The membership shall consist of individuals appointed by the Superintendent of Public Instruction or designee who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities (ages birth through 26). Membership shall include one or more of the following:
    - (1) Parents of children with disabilities (ages birth through 26);
    - (2) Individuals with disabilities;
    - (3) Teachers;
    - (4) Representatives of institutions of higher education that prepare special education and related services personnel;
    - (5) State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Act (42 USC § 11431 et seq.);
    - (6) Administrators of programs for children with disabilities;
    - (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
    - (8) Representatives of private schools and public charter schools;
    - (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
    - (10) A representative from Virginia's juvenile and adult corrections agencies; and
    - (11) A representative from Virginia's child welfare agency responsible for foster care.
  - b. Duties. The state special education advisory committee shall:

- (1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;
- (2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;
- (3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Act;
- (4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;
- (5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and
- (6) Review the annual plan submitted in accordance with 8VAC20-81-230 B 2 submitted by state-operated programs and the Virginia School for the Deaf and the Blind at Staunton.

c. Procedures.

- (1) The state special education advisory committee shall meet as often as necessary to conduct its business.
  - (2) By October 1 of each year, the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report shall be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.
  - (3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.
  - (4) All meetings and agenda items shall be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings shall be open to the public.
  - (5) Interpreters and other necessary accommodations shall be provided for advisory committee members or participants.
  - (6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.
16. Provide a report annually to the state special education advisory committee on the Virginia Department of Education's dispute resolution systems, including information related to due process hearings and decisions. This report and due process hearing decisions, with all personally identifiable information deleted, are made available to the public on the Virginia Department of Education's website. (34 CFR 300.513(d))
17. Establish goals for the performance of children with disabilities that: (34 CFR 300.157(a))
- a. Promote the purposes of the Act;
  - b. Are the same as Virginia's objectives for progress by children in its definition of adequate yearly progress, including Virginia's objectives

- for progress by children with disabilities, under § 1111(b)(2)(C) of the ESEA, 20 USC § 6311;
- c. Address graduation rates and drop out rates, as well as such other factors as Virginia may determine; and
  - d. Are consistent, to the maximum extent appropriate, with any other goals and academic standards for children as established by Virginia.
18. Establish performance indicators Virginia will use to assess progress toward achieving the goals in subdivision 17 of this section, including measurable annual objectives for progress by children with disabilities under § 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC § 6311. Annually report to the public and the United States Secretary of Education on the progress of children with disabilities in Virginia, toward meeting the goals described in subdivision 17 of this section, which may include elements of the reports required under § 1111(h) of the ESEA. (34 CFR 300.157(b) and (c))
19. Establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. These requirements include: (34 CFR 300.156(a) through (d))
- a. Related services personnel and paraprofessionals. The qualifications shall:
    - (1) Be consistent with any Virginia-approved or Virginia-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
    - (2) Ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    - (3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services to children with disabilities.
  - b. Ensuring that each person employed as a public school special education teacher in Virginia who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in § 1119(a)(2) of the ESEA.
  - c. Requiring local educational agencies to take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.
20. Respond to complaints filed by a parent about staff qualifications as provided for under this chapter. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or local educational agency employee to be highly qualified. (34 CFR 300.156(e))

21. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic educational agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings. (34 CFR 300.154)
22. Disburse the appropriated funds for the education of children with disabilities in Virginia to local school divisions and state-operated programs that are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities. (34 CFR 300.705 and 34 CFR 300.816)
23. Ensure that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving needed special education and related services. Report and certify annually to the United States Department of Education the number of children with disabilities in local educational agencies who are receiving special education and related services on a date between October 1 and December 1 of each year determined by the Superintendent of Public Instruction or designee. The annual report of children served shall meet the provisions of 34 CFR 300.641 through 34 CFR 300.645. (34 CFR 300.111 and 34 CFR 300.640)
24. Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in the local educational agencies, and if so, that VDOE takes steps required by federal mandates to address the disproportionality. This method shall include the collection and examination of data with respect to: (34 CFR 300.646(a) and 34 CFR 300.173)
  - a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability";
  - b. The placement in particular educational settings of these children; and
  - c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
25. Ensure that in the case of the determination of significant disproportionality, as outlined in subdivision 24 of this section, the Virginia Department of Education shall: (34 CFR 300.646(b))
  - a. Review and, if appropriate, provide for the revision of the policies, procedures, and practices used by the local educational agency in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of this chapter;
  - b. Require any local educational agency determined to have a significant disproportionality to reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly,



- but not exclusively, children in those groups that were significantly overidentified; and
- c. Require the local educational agency to publicly report on the revision of policies, practices, and procedures addressing the disproportionality.
- 26. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures, and ensure that each local educational agency is informed of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that local educational agency. (34 CFR 300.121 and 34 CFR 300.150)
  - 27. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met. (34 CFR 300.154(d) and (e))
  - 28. Ensure that if the Virginia Department of Education provides direct services to children with disabilities, it complies with state and federal requirements as if it is a local educational agency and uses federal funds under Part B of the Act to provide services. (34 CFR 300.175)
    - a. The Virginia Department of Education may use payments that would otherwise have been available to a local educational agency under Part B of the Act to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of the excess cost requirements as outlined in 8VAC20-81-260.
    - b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.
  - 29. Ensure that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures as follows: (34 CFR 300.124)
    - a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, IEPs are developed and implemented for those children; and
    - b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.
  - 30. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of information as specified in 34 CFR 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR 300.612 through 34 CFR 300.626. (34 CFR 300.123 and 34 CFR 300.610)
  - 31. Ensure that a practical method is developed and implemented to: (34 CFR 300.170)



- a. Examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions of children with disabilities:
    - (1) Among local educational agencies in Virginia; or
    - (2) Compared to the rates for nondisabled children within the local school division.
  - b. Review discrepancies and, if appropriate, require the local educational agency to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.
- 32. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities. (34 CFR 300.172)
  - a. Ensure that local educational agencies 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; and
  - b. In carrying out the provisions of this subsection, to the maximum extent possible, work collaboratively with the state agency responsible for assistive technology programs.
- 33. Prohibit the Virginia Department of Education and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 USC § 812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter. (34 CFR 300.174(a))
- 34. Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations and implementation of the requirements under the Act. These actions include: (34 CFR 300.600 through 34 CFR 300.609; 34 CFR 300.640 through 34 CFR 300.645; 34 CFR 300.149(b) and 34 CFR 300.165(b))
  - a. Providing the Secretary of Education state performance reports and data collections in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602.
  - b. Taking appropriate enforcement and technical assistance measures to assist local educational agencies in complying with the provisions of the Act in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602 and 34 CFR 300.608.
  - c. Establishing that the focus of Virginia's monitoring activities is on:
    - (1) Improving educational results and functional outcomes for all children with disabilities; and
    - (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.
  - d. Using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas

- identified in 34 CFR 300.600(d), and the indicators established by the U.S. Secretary of Education for the state performance plans.
  - e. Using the targets established in Virginia's performance plan and the priority areas described in 34 CFR 300.600(d) to analyze the performance of each local educational agency.
  - f. Following all the reporting requirements under 34 CFR 300.602(b).
  - g. Notifying the public of the pendency of an enforcement action taken by the U.S. Department of Education pursuant to 34 CFR 300.604.
  - h. Prohibiting the local educational agency from reducing the local educational agency's maintenance of effort under 34 CFR 300.203 for any fiscal year if the Virginia Department of Education determines that a local educational agency is not meeting the requirements of Part B of the Act, including the targets in Virginia's state performance plan.
35. Ensure each recipient of assistance under Part B of the Act makes positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act. (34 CFR 300.177(b))

**SCS performs the following functions:**

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to, children with disabilities who: (34 CFR 300.2 and 34 CFR 300.101)
  - a. Are migrant;
  - b. Are homeless;
  - c. Have been suspended or expelled from school, in accordance with this chapter;
  - d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8VAC20-81-110 I;
  - e. Are receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;
  - f. Are in state-operated programs; or
  - g. Are in public charter schools in accordance with the Code of Virginia.
2. SCS develops an IEP for each child with a disability served. An IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team. (34 CFR 300.112 and 34 CFR 300.300(b)(4)(ii))
3. SCS reviews and submits to the Virginia Board of Education for approval a plan for the provision of special education and related services for students with disabilities. (§ 22.1-215 of the Code of Virginia; 34 CFR 300.200)
4. SCS includes all children with disabilities including those students who are long-termed removed in all general Virginia Department of Education and division-wide assessment programs, including assessments described

- in § 1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at § 1412. (20 USC § 1412(a)(16)(A))
5. SCS ensures that steps are taken for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the areas served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education. (34 CFR 300.110)
  6. SCS ensures that each educational program for children with disabilities:
    - a. Is under the general supervision of the persons responsible for educational programs for children with disabilities in Virginia; and
    - b. Meets the educational standards of the Virginia Department of Education. In carrying out these requirements with respect to homeless children, ensures compliance with the Mc Kinney-Vento Act as it impacts the provision of special education and related services to children and the requirements of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.) are met.
  7. Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, SCS makes sure that the annual plan is presented to the special education advisory committee for approval and sent to the school board for approval.
  8. SCS develops policies and procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.199 and 34 CFR 300.129)
  9. SCS ensures that state and federal laws and regulations pertaining to LRE requirements are implemented
    - a. Ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements; and
    - b. Providing them with technical assistance and training necessary to assist them in this effort.
  10. SCS ensures that the requirements for LRE are implemented.
    - a. If for some reason SCS does not follow the requirements set forth pertaining to LRE, SCS must have written documentation in justifying its actions; and
    - b. If requested to do so by the VDOE, assist in planning and implementing any necessary corrective action.
  11. SCS reviews and evaluates compliance with state and federal laws and regulations pertaining to the education of children with disabilities. A federal review is initiated every five years. SCS complies with the federal audit and provides corrective actions where needed.
    - a. SCS has policies and procedures in place in the event a due process hearing is warranted.
    - b. SCS has a complaint process in place should any public or private agency, individual or organization for alleged violations.
  12. SCS follows an established mediation process developed by the Act. (§ 22.1-214 of the Code of Virginia; (34 CFR 300.506)

13. SCS ensures that students with disabilities placed in private nonsectarian special education schools either by SCS or by the Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.129, 34 CFR 300.146 and 34 CFR 300.147)
14. SCS ensures that each child with a disability placed in the Virginia School for the Deaf and Blind in Staunton is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.149)
15. SCS has established and maintains a local special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. (34 CFR 300.167 through 34 CFR 300.169)
  - a. Membership. The membership shall consist of individuals who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities (ages birth through 21). Membership shall include one or more of the following:
    - (1) Parents of children with disabilities (ages birth through 21);
    - (2) Individuals with disabilities;
    - (3) Teachers;
    - (4) Representatives of institutions of higher education that prepare special education and related services personnel;
    - (5) State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Act (42 USC § 11431 et seq.);
    - (6) Administrators of programs for children with disabilities;
    - (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
    - (8) Representatives of private schools and public charter schools;
    - (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
    - (10) A representative from Virginia's juvenile and adult corrections agencies; and
    - (11) A representative from Virginia's child welfare agency responsible for foster care.
  - b. Duties. The local special education advisory committee shall:
    - (1) Advise the School Board of unmet needs within the county in the education of children with disabilities (both with IEPs and 504 plans);
    - (2) Assist SCS in formulating plans for improving the performance of children with disabilities in the schools and in the community.
      - (a) Establish performance indicators to assess progress toward achieving those goals that address drop-out rates, graduation rates, parent involvement, discipline, Sol testing, etc.

**(b) Report to the public and the VDOE on progress of the State Performance Plan Indicators.**

**(3) Assist in the Child Find Process.**

**(4) Assist the Director of Special Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;**

**(5) Advise the Director of Special Education in developing and implementing policies relating to the coordination of services for children with disabilities; and**

**(6) Review and approve the annual plan including the budget for students with disabilities.**

**(7) Review and make recommendations of Local Special Education Policies and Procedures, 504 Policies and Procedures, the Family Life Curriculum, etc.**

**c. Procedures.**

**(1) The local special education advisory committee will meet quarterly unless there is nothing of importance to report one quarter (as voted by the special education advisory committee)**

**(2) By May 30 of each year, the local special education advisory committee will submit an annual school report and budget to the VDOE.**

**(3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.**

**(4) There will be an annual posting of all special education advisory meetings to afford interested parties a reasonable opportunity to attend. The posting will include names of advisory committee members and list ways the interested parties can address the board.**

**(5) Interpreters and other necessary accommodations shall be provided for advisory committee members or participants.**

**(6) The Composition of the committee shall include parents of children with disabilities, persons with disabilities, and stakeholder from local businesses and/or agencies.**

**(7) Local school division personnel shall serve only as consultants to the committee.**

**(6) The advisory committee shall serve without compensation.**

**16. The local Special Education Advisory Committee is kept informed of any and all complaints brought against SCS, and SCS responds to all complaints brought by parents and/or students.**

**17. SCS establishes goals to help students with disabilities in achieving Virginia's objectives for progress by children in its definition of adequate yearly progress.**

**18. SCS monitors the progress of students with disabilities make toward the State Performance Plan Indicators.**

**19. SCS strives to employ personnel who are highly qualified to carry out job responsibilities for students with disabilities, including content knowledge and like skills. The requirements include:**

**a. Related services personnel and paraprofessionals. The qualifications shall:**

- (1) Be consistent with any Virginia-approved or Virginia-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
  - (2) Ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
  - (3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services to children with disabilities.
- b. SCS ensures that each person employed as a public school special education teacher and who teaches in an elementary school, middle school, or secondary school is highly qualified.
  - c. SCS takes measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.
20. SCS Responds to complaints filed by a parent about staff qualifications. Nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or SCS to employ highly qualified. Personnel. (34 CFR 300.156(e))
21. SCS secures agreements with local agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities.
22. SCS receives a disbursement of appropriated funds for the education of children with disabilities in Virginia through VI B Funds, Preschool Grant , and Standard Of Quality funds for students with disabilities.
23. SCS ensures that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving needed special education and related services. SCS reports and certifies annually to the the number of children with disabilities within SCS who are receiving special education and related services on a date between October 1 and December 1 of each year determined by the Superintendent of Public Instruction or designee. The annual report of children served shall meet the provisions of 34 CFR 300.641 through 34 CFR 300.645. (34 CFR 300.111 and 34 CFR 300.640)
24. SCS ensures that a significant disproportionality based on race and ethnicity is not occurring within our school system. Disproportionality includes:
- a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability";

- b. The placement in particular educational settings of these children; and
  - c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
- 25. In case of the determination of significant disproportionality, as outlined in subdivision 24 of this section, SCS will: (34 CFR 300.646(b))
  - a. Review and, if appropriate, provide for the revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of disproportionality.
  - b. SCS would reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children, particularly, but not exclusively, children in those groups that were significantly overidentified; and
  - c. SCS would publicly report on the revision of policies, practices, and procedures addressing the disproportionality.
- 26. SCS establishes procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures. SCS has the responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served. (34 CFR 300.121 and 34 CFR 300.150)
- 27. SCS ensures that requirements regarding use of public or private insurance to pay for services required under this chapter are met. (34 CFR 300.154(d) and (e))
- 28. SCS uses federal funds under Part B of the Act to provide services for children with disabilities in the least restrictive environment. (34 CFR 300.175)
- 29. SCS ensures that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures as follows: (34 CFR 300.124)
  - a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, IEPs are developed and implemented for those children; and
  - b. SCS will participate in transition planning conferences arranged by the designated local Part C early intervention agency.
- 30. SCS ensures the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of information as specified in 34 CFR 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR 300.612 through 34 CFR 300.626. (34 CFR 300.123 and 34 CFR 300.610)
- 31. SCS ensures that a practical method is developed and implemented to: (34 CFR 300.170)

- a. Examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions of children with disabilities:
    - (1) Within SCS; or
    - (2) Compared to the rates for nondisabled children within the local school division.
  - b. If discrepancies are found and, if appropriate as determined by the VDOE, SCS would be required to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply, and that students with disabilities are not inappropriately long-term suspended or expelled,
- 32. SCS takes 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.
- 33. SCS does not require parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 USC § 812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter. (34 CFR 300.174(a))
- 34. SCS monitors, enforces, and provides technical assistance regarding the IDEA 2004 for teachers and staff, in accordance with the federal special education regulations and implementation of the requirements under the Act.  
SCS focuses on:
  - a. Improving educational results and functional outcomes for all children with disabilities; and
  - b. Improving educational results for children with disabilities.
  - d. SCS uses quantifiable indicators established by the U.S. Secretary of Education for the state performance plans.
  - e. SCS uses the targets established in Virginia's performance plan and the priority areas described in 34 CFR 300.600(d) to analyze the performance.
  - f. SCS follows all the reporting requirements.
  - g. SCS makes appropriate notifications to the public as required by the VDOE or by the U.S. Department of Education.
  - h. SCS ensures maintenance of effort under 34 CFR 300.203, including the targets in Virginia's state performance plan.
- 35. SCS makes positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act. (34 CFR 300.177(b))



## Responsibilities of Local School Divisions and State-Operated Programs

### 8VAC20-81-30. Responsibility of local school divisions and state-operated programs.

- A. **The requirements set forth in this chapter are applicable to the LEAs and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.**

Scott County Public School must collect data each year pertaining to race and ethnicity of children with disabilities pertaining to the following disabilities: mental retardation, specific learning disabilities, emotional disturbance, autism, other health impairments and speech/language impairments to assist in the determination of disproportionality. Scott County Public School's data must be compared to the Virginia Department of Education's analysis. Once SCS meets the state requirements for disproportionality, policies and procedures must be developed which are designed to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

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

- B. **The LEA shall ensure that all children with disabilities, aged two to 21, inclusive residing in this division have a right to a free appropriate public education, including: (§22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR 300.209)**
- 1. Children with disabilities who are migrant;**
  - 2. Children with disabilities who are homeless, in accordance with the provisions of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.);**

3. Children with disabilities who are in need of special education and related services, even though the Child has not failed or been retained in a course or grade, and are advancing from grade to grade.
4. Children with disabilities who are served in non-profit charter school in accordance with the Code of Virginia;
5. Children with disabilities who have been suspended or expelled from school;
6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in the jurisdiction of local LEA; with the exception of those provisions identified in 8 VAC 20-81-1101;
7. Children with disabilities who are residents of the LEA and who are on house arrest, as ordered by a court of competent jurisdiction;
8. Children with disabilities who are in foster care and residents of Virginia
9. Children with disabilities who are placed for noneducational reasons;
10. Children with disabilities regardless of citizenship or immigration status.

C. Every child with a disability is deemed to reside in a school division when (§ 22.1-3 of the Code of Virginia):

1. The child is living with a biological parent whose parental rights have not been terminated.
2. The child is living with an adoptive parent.
3. The child is living with an individual:
  - a. Other than the custodial parent but who is defined as a parent in § 22.1-1 of the Code of Virginia, not solely for school purposes; and
  - b. Pursuant to a special power of attorney executed under 10 USC § 1044b by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.
4. The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the school division.
5. The parents of the child are unable to care for him and he is living, not solely for school purposes, with another person who resides in the school division and is either:
  - a. The court-appointed guardian, or has legal custody; or
  - b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under § 63.2-900 of the Code of Virginia.
6. The child is living in the school division not solely for school purposes, as an emancipated minor pursuant to the provisions of the § 16.1-334 of the Code of Virginia.
7. The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued

emancipation under § 16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.

8. The child is in foster care and a resident of Virginia, but not a resident of the school division, under the following conditions: (§ 22.1-215 of the Code of Virginia)
  - a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or
  - b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of the school division.
9. The child is in foster care and a resident of Virginia, and a resident of the school division, under the provisions of subdivision 8 of this subsection.

D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)

E. Requirements for children with disabilities who are placed for noneducational reasons:

1. The local school division that is part of the Comprehensive Services Act team that places the child in a private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.
2. If a child in foster care is placed in a local school division of nonresidence and the IEP team of the local school division of nonresidence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has responsibility for the child under the Comprehensive Services Act (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).
3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides.

4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides.
5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.
6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.
7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.
8. If the child is aged 18 or older, who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides. The adult child's residence shall be the fixed home to which the adult child will return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.
9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105, the child is a resident of the division where the parent(s) resides.

- F. If there is a dispute between local school divisions regarding the parent's or legal guardian's residence, the local school division of the parent's or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's or legal guardian's residence is established in another local school division.
- G. If there is dispute between the parent or legal guardian of a child with a disability and the local school division regarding residency, the local school division of where the child is last enrolled remains responsible for providing the child with a free appropriate public education until resolution of the dispute.

- H. Each state-operated program shall ensure that the requirements in this chapter are applied to children with disabilities, aged two to 21, inclusive, in that institution. (§ 22.1-7 of the Code of Virginia)
1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.
  2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.
- I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division may, in the discretion of the local school board's policies and procedures, be admitted to the public schools of the school division for special education and related services. Tuition charges associated with this admittance are subject to the provisions of § 22.1-5 of the Code of Virginia.

**8VAC20-81-30. Responsibility of SCS and state-operated programs.**

- A. The requirements set forth in this chapter are applicable to SCS and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.
- B. SCS ensures that all children with disabilities, aged two to 21, inclusive residing in this division have a right to a free appropriate public education, including: (§22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR300.209)
1. Children with disabilities who are migrant;
  2. Children with disabilities who are homeless, in accordance with the provisions of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.);
  3. Children with disabilities who are in need of special education and related services, even though the Child has not failed or been retained in a course or grade, and are advancing from grade to grade.
  4. Children with disabilities who are served in non-profit charter school in accordance with the Code of Virginia;
  5. Children with disabilities who have been suspended or expelled from school;
  6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in the jurisdiction of SCS; with the exception of those provisions identified in 8 VAC 20-81-1101;

7. Children with disabilities who are residents of Scott County Public Schools and who are on house arrest, as ordered by a court of competent jurisdiction;
  8. Children with disabilities who are in foster care and residents of Virginia
  9. Children with disabilities who are placed for noneducational reasons;
  10. Children with disabilities regardless of citizenship or immigration status.
- C. Every child with a disability is deemed to reside in SCS when (§ 22.1-3 of the Code of Virginia):
1. The child is living with a biological parent whose parental rights have not been terminated.
  2. The child is living with an adoptive parent.
  3. The child is living with an individual:
    - a. Other than the custodial parent but who is defined as a parent in § 22.1-1 of the Code of Virginia, not solely for school purposes; and
    - b. Pursuant to a special power of attorney executed under 10 USC § 1044b by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.
  4. The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the Division of SCS.
  5. The parents of the child are unable to care for him and he is living, not solely for school purposes, with another person who resides in the Division of SCS and is either:
    - a. The court-appointed guardian, or has legal custody; or
    - b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under § 63.2-900 of the Code of Virginia.
  6. The child is living in the Division of SCS not solely for school purposes, as an emancipated minor pursuant to the provisions of the § 16.1-334 of the Code of Virginia.
  7. The child is living in the Division of SCS not solely for school purposes, as a validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.
  8. The child is in foster care and a resident of Virginia, but not a resident of Scott County, under the following conditions: (§ 22.1-215 of the Code of Virginia)
    - a. The child has been placed in foster care or other custodial care within the geographical boundaries of SCS, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or
    - b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of SCS.

9. The child is in foster care and a resident of Virginia, and a resident of the division of SCS, under the provisions of subdivision 8 of this subsection.
- D. If a child with a disability is living with the parent in the residence of the division of SCS, SCS is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)
- E. Requirements for children with disabilities who are placed for noneducational reasons:
1. SCS as part of the Comprehensive Services Act team that places the child in a private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.
  2. If a child in foster care is placed in a school within the division of SCS and the child is a nonresident and the IEP team of SCS where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has responsibility for the child under the Comprehensive Services Act (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).
  3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides.
  4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides.
  5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.
  6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.
  8. If the child is aged 18 or older, who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides. The adult child's residence shall be the fixed home to which the adult child will return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.
  9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105, the child is a resident of the division where the parent(s) resides.
- F. If there is a dispute between SCS regarding the parent's or legal guardian's residence, the local school division of the parent's or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's or legal guardian's residence is established in another local school division.
- G. If there is dispute between the parent or legal guardian of a child with a disability and the local school division regarding residency, the local school division of where the child is last enrolled remains responsible for providing the child with a free appropriate public education until resolution of the dispute.
- H. Each state-operated program shall ensure that the requirements in this chapter are applied to children with disabilities, aged two to 21, inclusive, in that institution. (§ 22.1-7 of the Code of Virginia)
1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.
  2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.
- I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within the jurisdiction of SCS may be admitted to SCS for special education and related services.



### **SCS Process and Procedures for Identifying Homeless Children and Youth**

When carrying out the requirements of IDEA '04 with respect to homeless children, the requirements of Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et. Seq.) must be met.

SCS through the Special Education Department sends out a survey to parents, shelter agencies, etc. in order to identify homeless children residing in Scott County. Surveys are turned in to the local schools; information is then compiled and a referral is sent to the Scott County School Board Office to the attention of the Director of Special Education.

Each referral is investigated by the School Guidance Counselor to determine whether the child qualifies as a homeless child under the definition the McKinney Vento Homeless Assistance Act. Once a child is identified, the School Guidance Counselor, under the direction of the Director of Special Education, must make contact with the family to determine specific needs. Other agencies such as the Department of Social Services, Mental Health, and the Scott County Health Department must be contacted according to need.

SCS provides after school remedial programs, special education programs, school counseling, transportation, and free and reduced lunch/breakfast programs to any homeless child in need. Other services may include free textbooks, school supplies, preschool supplies, and medical services such as speech, physical therapy, occupational therapy, vision or hearing screenings, or free dental checkups.

The School Guidance Counselor is responsible for agency coordination. Homeless children and their families may also be in need of shoes, clothing, glasses or shelter. If so, the school social worker must see that contacts are also made with local organizations/clubs such as the Rotary Club, Optimist Club, Hope House, etc.

A report is kept on file with the Director of Special Education outlining the assistance and/or services a child may have received.

### **SCS Process and Procedures for Identifying Children With Disabilities Who Are Incarcerated for 10 or More Days in a Regional or Local Jail**

Juveniles under the age of 18 are served in the Regional Detention Center located in Bristol, Virginia. Children with disabilities who are 18 to 21 years of age, inclusive, must be incarcerated in the Southwest Virginia Regional Jail located in Duffield, VA. Those children incarcerated in the Southwest Virginia Regional Jail have the same right to a free appropriate public education, as do the children incarcerated in the detention center. It is the responsibility of the Southwest Virginia Regional Jail and SCS to see that a child with disabilities who is incarcerated for 10 days or more have the right to continue their education.

A representative of the Southwest Virginia Regional Jail must have each detainee complete the Notice For Special Education Need Form (IEP/Incarcerated-14) upon entering the jail. This data is kept on file at the regional jail. If and when a child with disabilities requests special education and/or related services and is being retained 10 days or longer, or is already in school and requires services, the liaison for SCS must be sent the completed form. SCS is responsible for providing a certified special education teacher, a school social worker, and part-time secretary if the need arises. The special education teacher in agreement with a representative of the jail must determine an appropriate area in which the teacher can serve the child. If services are to be provided at the jail, a private area must be utilized. SCS is responsible for providing classroom books and materials necessary to meet the IEP goals and objectives of the child. In addition, appropriate equipment must be provided as necessary to enhance and facilitate learning. The school must be responsible for referral test, eligibility, and transitional services.

The Southwest Virginia Regional Jail must be responsible for providing a safe working environment and appropriate furniture. They must screen children to keep children who are high security risks separate. The Southwest Virginia Regional Jail must be responsible for providing a liaison to coordinate the interaction between education staff and the jail staff. They must provide for the use of telephone, fax equipment, and copy machine, and provide the use of the library as appropriate. Students may pursue a standard diploma, GED or Special Diploma.

#### SCS Procedures for Child Participation when Incarcerated

Only those students 18 to 22 years of age are incarcerated in the Southwest Virginia Regional Jail. If a child with a disability is incarcerated while in school and receiving special education services, an IEP Meeting must be called to address any necessary change in services through an addendum to the IEP (e.g., amount of time, place of services, etc.) within 10 administrative of notification of incarceration. A Change of Placement must also be completed. If the student is not in school at the time of incarceration and has graduated or left school with something less than a standard or advanced studies diploma, all special education services and protections under IDEA must be offered to the child. If the student denies special education services, his rights must be explained to him under the law, and he must be asked to complete/sign a denial form.

#### SCS Full Educational Opportunity

SCS ensures that all students with disabilities, aged two to 21 inclusive, residing within this county have a right to a free appropriate public education. Developmental, academic, behavioral, functional and transition goals (including career education, pre-vocational, and vocational goals as needed) protect each student's right to a free and appropriate education. The following procedures are

in place to ensure that all students with disabilities have access to all programs and activities offered by SCS.

1. SCS works cooperatively with Early Intervention, Part H, in the Child Find process to locate children birth to 5, inclusive, with disabilities. Early Intervention, Part H, serves children birth to age two. If SCS receives a referral for a child in this age range a contact is made with the Early Intervention Personnel for services. Likewise, if the Early Intervention personnel receive a referral for a child 2 to 5, inclusive, the parent or parents are referred to SCS.
2. For those children with disabilities who are age two, the parent or parents are given the choice between the two agencies for services. Transition services are offered between the two agencies in order to provide a smooth transition from one agency to the other.
3. Children with disabilities between the ages of two and 5, inclusive may access one of SCS' preschool programs. Two-year old children with disabilities may be served in a homebased program unless the child requires related services. In which case, the child is permitted to attend the preschool centerbased program on specified days for related services and to receive instruction while there (1-3 days a week depending on the severity, typically 2 days a week). Children three through five years of age are served in the centerbased program centrally located in the county. Once a child with disabilities leaves the preschool program, they are transitioned into the following selection of programs depending on the need of the child. These are:
  - (1) General Curriculum (Dismissed from special education services)
  - (2) General Curriculum (Monitored)

*For those children identified with a disability but receiving services from the general curriculum, progress must be monitored on a regular basis, but at the very minimum every nine weeks. If a child is failing in any academic subject that is part of the identified disability, an IEP Meeting must be called to discuss the failing grades. The team must consider:*

- *The cause for the failure or failures*
- *Appropriate placement*
- *Any additional modifications and/or accommodations that could be put into place in order for the child to remain in the general curriculum and be successful.*

- (3) Mainstreamed some resource special education services provided (Level I services)
  - (4) Mainstreamed into activities with their peers in the general curriculum with the bulk of their instruction in the resource room (Level II services)
  - (5) Self-contained special education programs with a concentration on behavior or life skills
  - (6) Related services on an as need basis for all programs
  - (7) Any other program as outlined in the IEP and approved that the child may need but not identified above
4. All children with disabilities are given an informal pre-vocational skills inventory by the end of their 8<sup>th</sup> grade year to determine strengths and

weaknesses. Eighth-grade children are also given a formal test to assist in transition planning, career and technical placement, and to assist with post-secondary employability.

5. SCS, to the maximum extent appropriate provides access to all children with disabilities to programs in career, pre-vocational, and vocational education. The Scott County Vocational School offers programs to children in building trades, practical nursing, welding, electronics, drafting, auto mechanics, cosmetology, foods, heat and air conditioning, masonry, auto body, printing, auto servicing, and horticulture. In all three-division high schools, exploratory programs and vocational classes are open to children with disabilities. Work-study, on-the-job training, and GED preparation programs are available to children with disabilities.
6. SCS, to the maximum extent appropriate, provides access to children with disabilities to nonacademic activities. Children with disabilities are currently participating in sports, clubs, and other non-academic activities.
7. All reasonable steps are taken to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time that students without disabilities receive instructional materials.
8. SCS is currently providing the necessary transportation to enable children with disabilities to benefit from special education. Children with disabilities as well as children without disabilities ride both regular school buses and handicapped buses. If necessary and as determined by the IEP team, payments are made to parents who transport their children to school in lieu of public transportation. Cabs may be utilized to transport children with disabilities for necessary therapy with parent permission and at no cost to the parent.
9. SCS has made every effort to eliminate architectural barriers. A study is made of each school in Scott County each year to determine what improvement can be made in order for our disabled population, children as well as adults, to better access our schools. This is an on-going process. In addition, when necessary modifications are made to tools and equipment in order for a disabled child to access their use.
10. Where services are needed which require interagency collaboration, interagency agreements have been developed. Agreements exist currently with the following agencies:
  - A. Department of Rehabilitative Services
  - B. Mental Health/Mental Retardation Services (Community Services)
  - C. Head Start
  - D. Early Intervention Council
  - E. Scott County Department of Social Services
  - F. Scott County Health Department
  - G. Juvenile Court Systems
  - H. Southwest Virginia Regional Jail
  - I. The Department of the Visually Handicapped
  - J. The Community Services Board
11. SCS employs teacher assistants each year to meet the needs of children with disabilities.

12. Transition service are offered to those child who are about to leave school and enter the world of work, attend college, or require further life skills programs.
13. Referrals are made to various agencies when a child with disabilities is about to leave school. These may include but are not limited to:
  - (1) The Department of Rehabilitation
  - (2) Goodwill
  - (3) Opportunities Unlimited
  - (4) The Junction Center
  - (5) Virginia Employment Commission
  - (6) Frontier Health
  - (7) Crossroads point
  - (8) Colleges
  - (9) Local Trade Schools
  - (10) Local Businesses
14. Once children with disabilities leave school, they are tracked for one year to determine the success of the transition process. If they request additional services, they are given the names and addresses of the various agencies that may be able to assist their needs.
15. All children with disabilities who graduate from school are informed of their rights to remain in school until they turn twenty-two unless they graduate with a standard or advanced studies diploma.

**SCS Forms and Timelines to Meet a Full Education al Opportunity Beginning with Referral** (Refer to the Procedural Handbook: Section 1-Introduction, Section 2-Referral, Section 3-Evaluation, Section 4 - Eligibility, Section 5 -Individualized Education Program, Section 6 -Discipline, Section 7-Miscellaneous, Section 8 – Informational, Section 9 – Due Process)

1. Referral is made to the principal, special education teacher, or administrator of special education.
2. Child Study Committee meeting is held within 10 business days unless requested to by-pass.
3. If the Child Study Committee recommends a formal evaluation, proper paperwork is forwarded to the Central Office within 3 days.
4. Test is complete and an Eligibility Committee meeting is held within 65 days (summers are included). The Eligibility Committee studies and discusses the evaluation data to determine if the child is disabled and in need of special education and/or related services. If a child is in need of services, a recommendation is forwarded to the IEP Committee.
5. An IEP meeting is held and a plan written for the child within 30 business days from Eligibility. Services begin immediately.

## **SPECIAL EDUCATION STAFFING REQUIREMENTS**

### **8 VAC 20-81-40**

#### **SCS Professional Staff**

The State Board of Education must, by regulation, prescribe the requirements for certification of special education teachers. No special education teacher must be regularly employed by a school board or paid from public funds unless such teacher holds a license or provisional license issued by the State Board of Education. Requirements for special education teachers are stated in the Licensure Regulations for School Personnel adopted by the State Board of Education. The Virginia Board of Education, in meeting “No Child Left Behind” requirements, has adopted requirements for teachers new to the teaching profession as well as for those not new in meeting the Definition of Highly Qualified in the Federal Core Academic Areas and Special Education, and SCS adheres to these requirements. SCS ensures that special education and related service personnel, including paraprofessionals, must be “appropriately and adequately prepared and trained.” This includes:

- Ensuring that those personnel have the content knowledge and skills to serve children with disabilities;
- Ensuring that each person employed as a special education teacher for K-12 instruction is highly qualified by July 1, 2006; and
- Taking “measurable steps” to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

#### **SCS Educational Settings**

Every effort is made to educate all children in the “mainstream” of education, the “Least Restrictive Environment” is considered for each child. To the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate school or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. It is recognized that a variety of special programs are necessary to service the range of complexity and severity of disabilities. The following is a brief description of the various special education services provided by the Scott County School System.

## **SCS Classroom Settings**

- 1. Monitored Settings**
  - A. The general education teacher serves children in the general curriculum who have a mild disability and only need minor modifications or accommodations.**
  - B. Children are monitored at least every 9 weeks and more often if warranted by the special education teacher.**
  - C. If regression occurs, a meeting must be called immediately and appropriate placement/interventions must be discussed.**
- 2. Inclusion (special education teacher is in the general education classroom with the general education teacher.)**
  - A. Serves students in the general curriculum who have a mild disability but may require additional assistance within the classroom.**
  - B. May require minor accommodations; such as: explanation of directions, clarification of information, etc.**
- 3. Inclusion/Pull-Out (pull-out on as needed basis)**
  - A. Serves children in the general curriculum who have a mild disability and may need assistance from time to time. Special Education Teachers and General Classroom Teachers collaborate, plan, and work together to meet the needs of the student.**
  - B. Same curriculum presented to both general education students and students with disabilities who may need accommodations/modifications.**
  - C. Pull-Out as needed either by teacher observation or at student request.**
- 4. Resource/Mainstreamed Classes**
  - A. Serves children less than 50% of the day, Level I Services, in a separate classroom.**
  - B. Serves children 50% of the day or more in general or vocational education.**
  - C. Children generally have mild to moderate disabilities.**
  - D. Alternative textbooks or materials presented on child level are generally provided.**
  - E. Some children receive material as presented in the general curriculum with modifications.**
- 5. Self-contained Classroom**
  - A. Serves children with moderate to severe disabilities**
  - B. Serves children more than 50% of the day, Level II Services.**
- 6. Other Alternative Placements (for those children who need other special education programs in other settings)**
  - A. Homebound**
  - B. Hospital**
  - C. Self-contained academic with nonacademic instruction with peers**
  - D. Alternative education**
  - E. Consultative education/regional programs**
  - F. Private day school**
  - G. Public and/or private day school**
  - H. Home schooling/monitored**
  - I. Jails**

- J. Split services (e.g., half day homebound – half day school setting)
- K. Homebased
- L. Residential
- M. Other as may be needed and determined appropriate

## 8VAC 20-81-40 Special Education Staffing Requirements

### Staffing Patterns

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (§ 22.1.253.13:2 of the Code of Virginia) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240).

1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.
  - a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.
  - b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities
2. Personnel assignment.
  - a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).
  - b. Special education teachers who are the teachers of record shall be highly qualified.
  - c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.
  - d. Special education services include those services provided directly to the student and those provided indirectly.
3. Caseload standards.
  - a. The maximum instructional caseloads for special education teachers and speech language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by the



local school board and the Virginia Department for the Blind and Vision Impaired.

- b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.
  - (1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.
  - (2) The building average shall not exceed 20 points if services are provided to students receiving Level I services and to children receiving Level II services. The building average shall not exceed 24 points if services are provided only to children receiving Level I services.
  - (3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels.
- c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.
- d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act shall be made in proportion to the percentage of school time on such assignment.
  - (1) This provision does not apply when special education and related services are provided in a general education class, based on the goals of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.
  - (2) When special education personnel provide services in a general education classroom based on the IEP goals of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

**B. Staffing for early childhood special education.**

- 1. Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program (IEP) team. A schedule comparable in length to school age students shall be made available if determined appropriate by the IEP team.
- 2. Staffing requirements.

- a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.
  - b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).
  - c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.
- C. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.
- D. Alternative special education staffing plan. School divisions and private special education schools may offer for consideration of approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant approval for alternative staffing levels upon request from local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.
- E. Educational interpreting services.
  - 1. The qualification requirements for personnel providing interpreting services for children who are deaf or hard of hearing are as follows:
    - a. Personnel providing educational interpreting services for children using sign language shall:
      - (1) Have a valid Virginia Quality Assurance Screening (VQAS) Level III; or
      - (2) Have a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
    - b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
    - c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for

- competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.
2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with the following criteria:
    - a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or
    - b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.
  3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:
    - a. Personnel providing educational interpreting services for children using sign language shall hold:
      - (1) A valid Virginia Quality Assurance Screening (VQAS) Level III; or
      - (2) A passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
      - (3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.
      - (4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.
    - b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
      - (1) Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.
      - (2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.
    - c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.

4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.

## **CHILD FIND 8 VAC 20-81-50**

In order to have a successful program, determine eligibility or proper placement of children and follow proper policies as outlined by SCS, a public awareness campaign is conducted at least annually designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive. It is the purpose of the campaign to inform the community of a person's statutory right to a free appropriate public education and the availability of special education programs and services. This campaign is intended to generate referrals, to explain the nature of disabling conditions, the early warning signs of disabilities, and the need for services to begin early. A variety of informational materials and media are utilized to inform the community of services available in Scott County. Personal contacts, public and private agency contacts, and organizational contacts all provide information in the person's native language or primary mode of communication upon request. Any parent, community member, or civic team may contact the Director of Special Education to request information, notices, parent rights, etc. in a language other than English. Parents and community members, as well as the Special Education Advisory Committee, are involved in the community awareness campaign. Procedures have been established for collecting, reviewing, and maintaining data relating to the active and continuing child find program designed to identify, locate, and evaluate those children and youth who are in need of special education and related services.

### **8VAC 20-81-50 Child Find**

#### **A. Child Find**

1. SCS maintains an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who:
  - a. Are highly mobile, such as migrant and homeless children;

- b. Are wards of the state;
  - c. Attend private schools, including children who are home-instructed or home-tutored;
  - d. Are suspected of being children with disabilities and in need of special education, even though they are advancing from grade to grade; and
  - e. Are under age 18 who are suspected of having a disability who need special education and related services and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.
2. SCS coordinates child find activities for infants and toddlers (birth to age two, inclusive) with Part C local interagency coordinating council. (34 CFR 300.124) Child Find is an on-going and cooperative process. When a child turns 2 years of age, the parent(s) is contacted and given the choice of continuing services with DSI until the child turns 3 years of age or transferring services to SCS Preschool Program. DSI, Social Services, and local pediatricians/doctors make referrals throughout the year. Major Child Find activities are carried out each academic year.
3. SCS also locates, identifies and evaluates children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools. (34 CFR 300.131, 34 CFR 300.133, 34 CFR 300.134)
- a. The child find process shall be designed to ensure:
    - (1) The equitable participation of parentally placed private school children, and
    - (2) An accurate count of those children.
  - b. The local school division shall undertake activities similar to the activities undertaken for its public school children.
  - c. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR 300.133.
  - d. The child find process shall be completed in a time period comparable to that for students attending public school in the local educational agency.
  - e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States.
    - (1) If the location of the administration of the private school in which the child attends is different from the school division in which the private school is located, the school division in which the private school is located and which the child attends is responsible for the child find activities.
  - f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, and representatives of parents of parentally placed private school children with disabilities, on how to implement the child find and evaluation activities.

## **B. Public Awareness**

- 1. SCS, at least annually, conducts a public awareness campaign to:**
  - a. Inform the community of a person's inclusive statutory right (age 2-21 inclusive) to a free appropriate public education and the availability of special education programs and services;**
  - b. Generate referrals, and**
  - c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.**

## **C. Screenings**

- 1. SCS has procedures, including timelines, to document the screening of children enrolled in the division, including transfers from out of state as follows:**
  - a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8VAC20-250-10. (§ 22.1-273 of the Code of Virginia)**
  - b. Children shall be screened for scoliosis in accordance with the requirements of 8VAC20-690-20. (§ 22.1-273.1 of the Code of Virginia)**
  - c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.**
  - d. Children who fail any of the above screenings may be rescreened if the original results are not considered valid.**
  - e. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia. (§ 22.1-270 of the Code of Virginia)**
  - f. Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.**
- 2. SCS provides all applicable procedural safeguards. These include the following:**
  - a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;**
  - b. Confidentiality; and**
  - c. Maintenance of the student's scholastic record.**
- 3. Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)**

#### **D. Referrals.**

1. SCS has procedures to process in a timely manner all referral requests for a child suspected of having a disability.
2. SCS has a team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child's educational and behavioral needs.
  - a. The team shall include:
    - (1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);
    - (2) The principal or designee;
    - (3) At least one teacher; and
    - (4) At least one specialist.
  - b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.
  - c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.
3. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.
  - a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.
  - b. If the referral is made to the special education administrator or designee, the administrator shall within three business days:
    - (1) Initiate the evaluation eligibility process in accordance with 8VAC20-81-60, 8VAC20-81-70, and 8VAC20-81-80;
    - (2) Require that the school-based team review and respond to the request; or
    - (3) Deny the request. If the request is denied, prior written notice in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures. (34 CFR 300.507)
4. In reviewing the child's performance, the team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures. (34 CFR 300.307)
  - a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.
  - b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services. (34 CFR 300.309)
5. Timelines for referral process.

- a. The team shall meet within 10 business days following the receipt of the referral.
- b. The team shall refer the child to the special education administrator or designee within three business days if the team determines that the child should be referred for an evaluation for special education and related services.
- c. If the team decides not to refer for an evaluation for special education and related services, prior written notice in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing. (34 CFR 300.507)
- 6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.
- E. Prohibition on mandatory medication (34 CFR 300.174).
  - 1. The Virginia Department of Education prohibits state and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 USC § 812(c)) for a child as a condition of attending school, receiving an evaluation under 34 CFR 00.300 through 34 CFR 300.311, or receiving services under this part.
  - 2. Teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

#### **SCS Child Find – On-Going Process & Procedures**

- A. SCS implements an on-going and continuous strategies to identify, locate, and evaluate children residing or parentally placed in private schools (including those that are home-schooled or home-tutored) within its jurisdiction who are birth to age 21 and need special education and related service as defined in the Virginia Regulations. Strategies will focus on: children in typical homes; children who are mobile, including those who are homeless or migrant, and who are wards of the state; children who are under 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail for 10 or more days; and children who are suspected of being children with disabilities, even though they are advancing from grade to grade.
  - 1. Scott County uses of a variety of materials and media:
    - a. SCS provides for personal contact with community teams, public and private agencies, and organizations; and
    - b. SCS provides information in the person's native language or primary mode of communication if requested to do so. 8 VAC 20-80-50 B.2.



2. SCS shows evidence of involvement of parents and community members in the required child find and community awareness campaign. This is completed annually. These activities include:
  - a. Distribution of brochures to area businesses, physicians, religious schools, attorneys, homeless shelter, etc.
  - b. Distribution of brochures to parent/teacher teams in each school
  - c. Screening of all new enrollees
  - d. Newspapers are utilized to disseminate information on the availability of a free appropriate public education.
  - e. In conjunction with the Headstart Program, preschool teachers are made available to the parents to provide information concerning special education in order to generate referrals.
  - f. Requests to all the schools are sent seeking information on children who may be homeless and/or at risk.
- B. Strategies to identify children who are parentally placed in private schools will be designed after consultation with representatives of those settings. The strategies will include:
  1. Information provided on special education eligibility and services for the parents of children parentally placed in private schools is given to the principal of the school to disseminate with directions on how to refer a child for an evaluation;
  2. An annual notice/description of services is published in SCS's parent/student handbook;
  3. An annual meeting with and information provided to private schools and parents who home-school and home-tutor about special education and how to refer a student for a special education evaluation;
  4. Presentations at local civic organizations' meetings such as the Rotary Club are provided upon request;
  5. An annual letter and meeting with private school/day care providers and parents of children who attend those (including parents who homeschool);
  6. Screening in each school as required in the Virginia Regulations which includes screening in the areas of speech and language, fine and gross motor, scoliosis, vision, and hearing for new students and at selected grade levels;
  7. An interagency agreement with Part C providers on referrals to Part B services; and
  8. An annual update to FAPT participating agencies.
- C. These efforts will ensure an accurate count of these children.
- D. These efforts will ensure that the cost associated with carrying out these requirements for parentally-placed private school children, including individual evaluation, will not be considered in determining if SCS has met its obligations for calculation of its expenditures under federal and state regulations governing special education

#### **SCS Direct and Indirect Contacts**

- In-service for school personnel and parent teams

- Continuous contact with the Scott County Department of Health is maintained. Through an interagency agreement, Health Department personnel agree to refer all children with suspected disabilities or at risk children to the administrator of special education. This is an ongoing process.
- Interagency agreements also exist between SCS and the Department of Social Services, Duffield Regional Jail, the Community Services Board, Court Services, Scott County Health Department, Headstart, the local Christian School, and Scott County Mental Health. All of these agencies agree to refer any child suspected of having a disability and needing services.
- During the school year local pediatricians are sent brochures to disseminate to their patients explaining any and all available special education services in order to solicit referrals. It is expected that all known children who are disabled must be referred.
- SCS offers information on the web, searching for any child who may have a disability, for those parents who have access to the internet.
- Representatives from SCS meet, upon request, with community teams, public and private agencies, and organizations to establish working relationships.
- Contact is made with the local religious school informing them of the referral process and availability of special education services.
- The Director of Home Instruction refers those parents/guardians seeking information concerning home schooling so that they must be aware of their rights to a free appropriate education for their child with disabilities.
- Children who are incarcerated in the Southwest VA Regional Jail are interviewed on a weekly basis to determine if there any who may need special education services.
- General classroom teachers are educated on the characteristics of those children within the school system who may be barely passing from grade to grade and who struggling academically or who may need a related service so that they make referrals for special education services.

#### **SCS Screenings- Process and Procedures**

- A. SCS assigns responsibility for each area of screening to qualified professionals who will assume responsibility for conducting the screening in assigned schools, including recruitment and training of appropriate volunteers and other staff to ensure that the screenings are conducted within the required timelines, for children enrolled in SCS, including transfers. A student's pre-school physical examination required under the Code of Virginia will be accepted for the screening if the area(s) of screening to be conducted were included and documented on the physical examination form.
- B. Those conducting each area of screening will document results on a screening form and ensure that it is filed in a confidential manner in the student's scholastic record. After the screening is conducted, the assigned professional will inform parents of the results of the screening. In addition, those responsible for the screening will follow-up on failed screenings by

scheduling re-screenings or making referrals for special education evaluations as appropriate.

- C. Screening timelines and additional procedures will be implemented as follows:
1. Hearing and vision screenings will be conducted within 60 administrative days of the opening of the school year for all children in grades K, 3, 7, and 10.
  2. Speech, voice, language, and fine and gross motor will be screened within 60 administrative days of the opening of school for all new enrollees including those in kindergarten and those who transfer into the school division for the first time.
  3. Scoliosis screening\* will be conducted twice during the six year period in which students are in grades 5 through 10. For students in the school division at grade 5, the screening will be conducted in grade 5 and again at grade 10. Students who enter SCS for the first time after grade 5 will be screened during the year they enter and while in grade 10. If they enter SCS for the first time during grade 10, they will only be screened once during that year.
  4. The SCS will provide written notice to parents of the scheduled screening within the student/parent handbook.
  5. For scoliosis screening, the notice shall include the following additional information:
    - (a) a definition of scoliosis,
    - (b) a description of how scoliosis is identified,
    - (c) a statement describing why it is important to screen for scoliosis,
    - (d) a description of the procedures used to screen for scoliosis,
    - (e) a description of potential treatments for scoliosis, and
    - (f) information on where screenings may be obtained, including the school.
  6. Parents will also be provided an opt-out form if they wish to exclude their child from the school's scoliosis screening.

[\*NOTE: As an alternative to these sample procedures for scoliosis, school divisions may choose to provide parents with educational information. Please refer to VDOE's "Guidance Document for Local Screening Requirements in Virginia's Public Schools", August 2009, and 8 VAC 20-690-20 for state regulations for information related to scoliosis screening.]

- D. The SCS will designate persons responsible for ensuring that children are referred to the special education administrator or designee if results from the screening suggest that a referral for evaluation for special education and related services is indicated. The designated persons will ensure that the referral includes the screening results.
1. SCS has established process and procedures for the screening of all new enrollees, as follows:
    - a. All children (through grade three), within 60 business days of initial enrollment in a public school, are screened in speech, voice, and language to determine if a referral for an evaluation for special education and related services is indicated.

- b. All children, within 60 business days of initial enrollment, are screened in the areas of vision and hearing to determine if a referral for an evaluation for special education and related services is indicated. In addition, the vision and hearing of all children in grades three, seven, and 10 are screened during the school year.
  - c. All children new enrollees (through grade three), within 60 business days of initial enrollment, are observed by the classroom teacher and screened for fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.
  - d. The screening takes place up to 60 business days prior to the start of school. SCS may recognize screenings reported as part of the child's preschool physical examination required under the Code of Virginia if completed within the above prescribed timeline.
  - e. Specific measures or instruments are employed which use:
    - (1) Both observational and performance techniques; and
    - (2) Techniques which guarantee nondiscrimination.
  - f. Children who fail any of the above screenings are rescreened after 60 business days if the original results are not considered valid.
  - g. Children are referred to the special education administrator or school designee no more than five business days after screening or rescreening if results suggest that a referral for evaluation for special education and related services is indicated. The referral includes the screening results.
2. SCS has established and maintains screening procedures to assure the identification of children with suspected disabilities residing within its jurisdiction and requiring special education. SCS provides all applicable procedural safeguards. SCS provides for the mass screening of children. These include ensuring the following:
- a. Providing a written notice to parents of the scheduled screening and, if the child fails the screening, a written report of the results of the screening;
  - b. Confidentiality; and
  - c. Maintenance of the child's scholastic record are met following requirements as outlined in the Virginia regulations governing special education and Federal Family Education Rights and Privacy Act.
  - d. Screening of children for special education may be accomplished via the mass screening. However, no other mass screenings are utilized to determine identification for special education.
3. A child study committee is established in each school to review records and other performance evidence of the children referred through a screening process, or by school staff, the parent or parents, or other individuals.
- a. All referrals to the Child Study Committee are made to the principal or designee. The committee includes:
    - (1) The referring source, as appropriate (except if inclusion of referring source would breach the confidentiality of the child);
    - (2) The principal or designee;
    - (3) At least one teacher; and

- (4) At least one specialist.
  - b. The Child Study Committee meets within 10 business days following receipt of the referral. The purpose of the meeting is to identify and recommend strategies to address the child's learning, behavior, communication, or development. This does not preclude the Child Study Committee from making a referral or evaluation for special education and related services prior to implementing strategies. The Child Study Committee must refer the child to the special education administrator or school designee within three business days following the determination by the committee that the child should be referred for an evaluation for special education and related services.
  - c. Actions by the committee must be documented in writing and must include information upon which a decision was based.
4. SCS uses a variety of sources of evidence, including: response to scientifically-based interventions; grades; attendance; SOL data; RTI data (if available); review of remediation attempts to include Title I, Reading or Math Specialist; medical history; and outside testing (if available) to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility. SCS, however, will not delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented.

## **SCREENINGS**

### **60 Day Screening Team**

SCS has formed a screening team consisting of RNs, LPNs, health assistants, speech therapists, and a vision specialist to screen for: speech, language and voice; hearing and vision; scoliosis; and fine and gross motor skills within 60 administrative working days of initial enrollment and may be screened after 60 business days if original results are not considered valid. This serves as notice to parents and students of the screenings. Parental permission is not required for screenings; however, parents may opt their child out of the screening with a written note to the school within the first 2 weeks of enrollment. All procedural safeguards are followed during the screening process, including: written notice to parents when children fail two screenings

and are being referred for further testing, confidentiality of child information, and maintenance of information in each child's scholastic record. Screenings reported on a child's preschool physical exam might be acceptable if all necessary information is available. The following is a list of those areas to be screened and more specific information.

**SPEECH, LANGUAGE, and VOICE SCREENINGS** - *will be screened within 60 administrative days of the opening of school for all new enrollees including those in kindergarten and those who transfer into the school division for the first time.*

**HEARING & VISION SCREENING** (Grades K, 3, 7, 10)

**AUDIOLOGICAL EVALUATION**

Children with apparent hearing difficulties (utilizing Pure Tone/Tympanogram evaluations) are examined by an audiologist if they fail two hearing screenings.

**SCOLIOSIS SCREENING** - Will be conducted twice during a six-year period in which students are in grades 5 through 10. For students in the school division at grade 5, the screening will be conducted in grade 5 and again at grade 10. Students who enter SCS for the first time after grade 5 will be screened during the year they enter and while in grade 10. If they enter SCS for the first time during grade 10, they will only be screened once during that year.

Scoliosis is defined as a lateral curvature of the spine. In most cases, the scoliosis is idiopathic (80% of cases), meaning that it is not known what has caused the curvature to occur. It is not caused by having poor posture or carrying a heavy book bag and in most cases, if detected early, it can be treated and does not cause any permanent problems or disabilities.

Scoliosis is usually discovered during routine screening with the forward bend test (Adam's test). During this exam, the child stands up straight, with feet together. The examiner will first check that the shoulders, scapulae (shoulder blades), and hips are level (uneven shoulders can be a sign of scoliosis) and the spine is straight. Next the child will bend forward at the hips, with the arms loosely extended and the palms held together. In children with scoliosis, bending forward will reveal an asymmetry of the back or posterior chest wall causing an elevation of one side of the back, or a rib hump. Screening can either be accomplished at school or from the child's medical doctor.

**FINE AND GROSS MOTOR** - *will be screened within 60 administrative days of the opening of school for all new enrollees including those in kindergarten and those who transfer into the school division for the first time.*

### **Special Education Referral from Screening Results**

If a child is referred for a special education evaluation through the screening process, refer to procedures outlined for “Referral of Initial Evaluation 8 VAC 20-81-60”. Once a referral is received, the Child Study Committee will convene within 10 business days.

### **SCS Screening Referral Procedures:**

- A. Referrals will be accepted in written, electronic, or oral form by each school’s principal or designee for children aged two to 21, suspected of having a disability, regardless of whether the child is enrolled in public school. Referrals will be received from any source including parents, school staff, the school-based team, the Virginia Department of Education, any other state agency, or other individuals regarding children who are residents of the locality or who attend a private school that is located within the locality. Once a referral is received, the principal or designee\* will ensure that the referral is documented on a referral form which includes the child’s name, the reason for the referral and efforts made to address the concerns, the date the referral was received, the name of the person or agency making the referral, the parent’s name, and contact information for the parent.**
- B. Within 10 business days, the referral will be reviewed by a school team which includes the referring source, as appropriate, the principal or designee\*, at least one teacher, at least one specialist, and one member who is knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children’s educational needs. Additional professionals may be included as appropriate and based on the reason for the referral.**
- C. This team will review the reason for the referral and review the child’s record and any other performance evidence or data that will be used to make recommendations for educational and/or behavioral needs. The team may determine that: (1) the referral for special education evaluation is not needed for the student, noting that the child is performing adequately; (2) recommend interventions with prescribed review dates; or (3) refer the child for a special education evaluation. All decisions of this team shall be documented in writing and include information upon which a decision was based. Such documentation shall be maintained in the student’s scholastic record.**
- D. The team may use a response-to-intervention approach for identifying recommended strategies which are research-based and will gather data documenting the student’s response to the applied intervention. The team will schedule regular meetings to discuss the data and the student’s progress and to determine whether additional interventions are needed. The use of these strategies will not delay or interfere with the appropriate referral for special education evaluation which may be administered concurrently with team recommended interventions. Referrals from the team for a special education evaluation will be forwarded to the special education administrator or designee\* within 3 days of their decision.**
- E. If the team decides not to refer the student for a special education evaluation, the parent will be provided with prior written notice indicating that the request**

for a special education evaluation was refused, the reasons for the decision, a description of other options the team considered and reasons why they were not accepted, a description of the evaluation information (each evaluation procedure, assessment, record or report) used to make the decision, and any other factors that were relevant to the team's decision, and their right to appeal the decision through a due process hearing. The parents will be given a copy of the procedural safeguards.

- F. If the referral is made to the special education administrator or designee,\* within three business days, the special education administrator or school designee\* will initiate the evaluation-eligibility process, forward the referral to the school team to review and respond to the request, or deny the request. If the referral is made by a parent, the parent will be notified of the decision. If the request is denied, the parent will be provided prior written notice as already described and as is required at 8 VAC 20-81-170 of the Virginia Regulations.

- \* Note: Each LEA may wish to specifically designate these roles, such as, "the principal may assign the responsibilities under these procedures to one of the assistant principals", or definitively direct that the referrals are made to the special education administrator and not provide the option of designee.



## **REFERRAL FOR INITIAL EVALUATION**

### **8 VAC 20-81-60**

Prior to evaluation, parental consent must be obtained and Written Prior Notification and Procedural Safeguards (in native language unless it is clearly not feasible to do so) received by the parent(s) or guardian. A surrogate parent must be assigned when necessary. Either a parent, the Virginia Department of Education, or other State agency or a representative of SCS may request and evaluation. Child evaluations must be maintained in a confidential manner, and SCS must use nondiscriminatory assessments. The evaluation process gathers academic information about the child and does not use a single measure or assessment as the sole criterion for determining whether or not a child is eligible for special education and related services, or for determining an appropriate educational program for a child with a disability. Parents must be given the opportunity to examine their child's records at any time, the opportunity for an independent educational evaluation when there is some concern regarding the evaluation results and the opportunity for an impartial due process hearing if disagreements cannot be resolved. Assessment and evaluation materials and procedures used are selected so as not to be racially or culturally discriminatory. The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation "must not be considered to be an evaluation for eligibility for special education and related services."

From receipt of referral to the administrator of special education or designee to the Eligibility Meeting is 65 school days. However, if requested by the parent, all evaluations or data reports must be made available to the parent on the 63<sup>rd</sup> day, two days prior to eligibility, in order to give the parent time to review the reports.

Evaluations are completed within the mandated requirements, unless:

- A child transfers from one LEA to SCS after the evaluation process has been initiated, but prior to an eligibility determination being made. In such cases, if "sufficient progress" is being made to ensure a "prompt completion" of the evaluation, the parent and SCS may agree to a specific time by which the evaluation must be completed, which may be beyond the 65 business day timeframe. However, the prior LEA and SCS are required to coordinate their efforts, as "expeditiously as possible," to ensure "prompt completion" of the evaluations.
- If the parent "repeatedly fails or refuses" to produce the child for the evaluation.

However, upon request, a parent and or guardian may request to review the evaluation data 2 business days prior to the Eligibility Meeting; therefore, the evaluation should actually be complete upon the 63<sup>rd</sup> day of the evaluation process. Any of the following components for evaluation may be selected at one time or another in the evaluation process. The child's parent or parents are given

every opportunity to participate in the selection process of the evaluation components.

#### **8VAC 20-81-60. Referral for Initial Evaluation**

- A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.**
- 1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, other individuals, or a school-based team in accordance with 8VAC20-81-50 D 5 b. (34 CFR 300.301(b))**
  - 2. The referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.**
  - 3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected of having a disability, from a source other than the school-based team, the special education administrator or designee shall:**
    - a. Initiate the initial evaluation procedures under subsection B of this section;**
    - b. Refer the child to the school-based team to review and respond to the request under 8VAC20-81-50 D 3 b (2); or**
    - c. Deny the request, and provide prior written notice in accordance with 8VAC20-81-170.**
- B. Procedures for referral for initial evaluation.**
- 1. The special education administrator, or designee, shall:**
    - a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;**
    - b. Implement procedures for maintaining the confidentiality of all data;**
    - c. Provide written notice and procedural safeguards to inform the parent(s) in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:**
      - (1) The referral for evaluation,**
      - (2) The purpose of the evaluation, and**
      - (3) Parental rights with respect to evaluation and other procedural safeguards;**
    - d. Inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child;**
    - e. Secure informed consent from the parent(s) for the evaluation;**
    - f. Ensure that all evaluations consist of procedures that:**

- (1) Gather relevant functional, developmental and academic information about the child to determine if the child is a child with a disability; and
    - (2) Are sufficiently comprehensive to identify all of the child's special education and related services needs, and educational needs; and
  - g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action. The time frame shall not apply to the local school division if: (34 CFR 300.301 (d) and (e))
    - (1) The parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or
    - (2) If the child enrolls in a school served by the local school division after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the local school division is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and the local school division where the child is enrolled in school agree to a specific time when the evaluation will be completed.
  - h. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days. (34 CFR 300.300(a), 34 CFR 300.3049(c))
  - i. If the decision is to not evaluate, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's right to appeal the decision through due process hearing procedures. (34 CFR 300.507)
2. Parental consent requirements. (34 CFR 300.300)
- a. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.
  - b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.
  - c. The local school division shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.
  - d. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local school division is not required to obtain parental consent to determine whether the child is a child with a disability if:
    - (1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;
    - (2) The rights of the parents of the child have been terminated in accordance with Virginia law; or
    - (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed

by the judge to represent the child. The local school division shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

- e. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.
- f. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the local school division may not use mediation or due process to pursue the initial evaluation.

#### **SCS Pre-referral Process through the School-Based Team**

If an individual (parent or otherwise) expresses a concern pertaining to a child's education, a Letter of Concern is provided to the parent or parents of the child requesting a meeting with the School-Based Committee. Concerns may include behavior difficulties, discipline issues, medical concerns, learning concerns in any of the content areas, communication problems, etc. Teachers and parents can seek ideas from the School-Based Committee pertaining to teaching strategies, modifications or accommodations to try within the classroom. The principal or his/her designee is responsible for the School-Based Meeting. Once the parent or parents are sent the Letter of Concern, the School-Based Committee must meet within 10 business days. If the School-Based Committee determines that a referral for a formal assessment is warranted, a referral will be made to the Child Study Committee to review the request with the parent and pertinent members of the School-Based Committee. Members of the School-Based Committee may serve on the Child Study Committee as well.

#### **Members of the School-Based Committee should consist of:**

Principal or designee  
General classroom teacher  
Parent  
Student as appropriate  
Specialist (at least one)  
Referring source (except if inclusion of a referring source would breach the confidentiality of the child)

## **SCS Initial Evaluation - Policy**

- A. SCS ensures that these referral procedures apply to all children, aged two to 21, inclusive, who are residents in accordance with the Virginia Regulations, whether enrolled in public school or not, who are suspected of having a disability.**
- B. All referrals for initial special education evaluations will be processed using the referral procedures detailed above. Referrals from a school-based team or referrals accepted and initiated by the special education administrator/designee will result in the start of the process of determining eligibility for special education and related services.**
  - 1. The special education administrator/designee will ensure to record the date the referral was received, reason for referral, and names of the person or agency making the referral.**
- C. Once the referral for a special education evaluation is made by the child-study team or accepted by the special education administrator/designee, prior written notice indicating that the child has been referred for an evaluation and the purpose of the evaluation along with the procedural safeguards notice will be provided to the parents in their native language or primary mode of communication. Parents will also be informed of the procedures used to determine what evaluation data is needed and request any evaluation information that the parent may have on the child.**
- D. Evaluations to be administered will be identified and will be included to enable the school division to gather relevant functional, developmental, or academic information about the child so the eligibility team will be able to determine if the child is a child with a disability in need of special education and related services. The evaluation process will be sufficiently comprehensive to enable SCS to determine, if the child is eligible, the child's special education and related services needs, as well as educational needs. The principal/designee or special education administrator/designee will secure informed consent for the evaluation process prior to initiating the evaluations.**
- E. Professionals will be assigned to complete evaluations consistent with their expertise, and will be provided with a deadline for completion to ensure that eligibility decisions are made within 65 business days from the receipt of the referral for the special education evaluation. The 65 business day timeline may be extended if the parent and eligibility team agree in writing that additional time is needed to obtain data. This timeline does not apply in the following circumstances:**
  - 1. for those students whose parents repeatedly fail to produce the child for the evaluation; or**
  - 2. for a child that enrolls in SCS after the 65 business days has begun in a previous school division, but prior to a determination by the child's previous school and/or school division as to whether the child is a child with a disability, SCS will work to complete the evaluation expeditiously. This exception only applies if SCS is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and SCS agree to a specific time when the evaluation will be completed.**
- F. The staff will comply with all requirements related to confidentiality of student records throughout the evaluation and eligibility process.**

**G. SCS acknowledges the following parent consent requirements:**

- 1. parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.**
- 2. parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.**
- 3. SCS shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.**
- 4. for initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, SCS is not required to obtain parental consent to determine whether the child is a child with a disability if:**
  - (a) despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;**
  - (b) the rights of the parents of the child have been terminated in accordance with Virginia law; or**
  - (c) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.**

**SCS shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.**

- 5. if the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, SCS may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. SCS does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.**
- 6. if a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the SCS may not use mediation or due process to pursue the initial evaluation.**

**SCS Initial Evaluation – Child Study Committee**

**The Child Study Committee serves an important role in the referral process for special education. SCS ensures that any of the following may initiate a request for an initial evaluation to determine a child's eligibility for special education and related services: a parent, SCS, the Virginia Department of Education, or any other state agency. Once the request is made for initial evaluation, the Child Study Committee is convened within 10 business days to review the request for initial evaluation. The Child Study Committee including the person/agency making the referral must review all information/data to determine if a comprehensive evaluation is appropriate for the child. The Child Study Process may not hinder a child's right to a free appropriate public education.**

**Just because the Child Study Committee convenes does not mean that the child must be referred for formal testing from the special education program. With**

consensus, the Child Study Committee may also recommend specific teaching strategies, accommodations and/or modifications to put in place for the student and review the progress at a later date. The Child Study Committee may determine that a referral needs to be made to Title I or to a Reading Specialist for interventions. If the Child Study Committee determines that a referral for a formal assessment is needed, the central office must be contacted within 3 business days from the meeting with appropriate paperwork.

**SCS Members of Child Study** (A minimum of 3 must serve on the committee, some members may serve dual roles. The Child Study Committee is to be made up of the same members as the IEP Team.)

- a. Principal and/or vice principal – The principal serves as chairman or his/her assigned designee may serve as chairman
- b. Parent
- c. Child as appropriate
- d. Guidance counselor
- e. Special education teacher
- f. Classroom teacher
- g. Referral source (unless inclusion would breach confidentiality of the case)
- h. Any specialist involved with the child
- i. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.

### **SCS Role of the Child Study Committee**

In reviewing the child's performance, the Child Study Team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures. Research-Based Interventions are normally used in SCS prior to referring a child to special education for formal assessments. The Child Study Team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services. It is the responsibility of the Child Study Team to do any of the following:

1. To make recommendations for accommodations and/or modifications within the general curriculum in order for the child to be successful within the general education setting

2. To determine if it is appropriate to complete an educational screening of the child to better evaluate the child's strengths and weaknesses, and if so, to initiate the screening process
3. To designate a team member responsible for case management,
4. To report, in writing, on strategies implemented to address the child's learning, behavior, communication, or development.
5. To record any and all decisions in writing and maintain confidentiality.
6. To contact the child's parents (if parents were not in attendance) if a formal evaluation for special education and related services is recommended, inform them of the committee's decision, secure permission or denial for services for further evaluation and inform them of their parental rights in special education. (The child's parent(s)/legal guardian must be informed that they have the right to refuse permission for evaluation and of their due process rights).
7. Contact the special education department within 3 business days of Child Study to make a request for a formal evaluation if one has been recommended.
8. To gather information and come to a conclusion as to whether the child should undergo a comprehensive evaluation to determine if he/she might have an undetected disability or requires special education services.

### SCS Referral

1. Anyone can make a referral.
2. Once the referral is received, the referral is processed in a timely manner, The person receiving the referral documents when the referral was received and schedules a Child Study Meeting within 10 business days.
3. The meeting of the child study committee must not:
  - A. Deny or delay the parent's or parents' right to a due process hearing to contest the decision not to evaluate;
  - B. Deny or delay the parent's or parents' right to make another referral in the future; or
  - C. Delay the evaluation of a child who is suspected of having a disability.
4. The Child Study Committee may attempt classroom interventions during the evaluation process, but such interventions cannot delay the evaluation.
5. If the decision is not to evaluate, prior written notice must be given to the parent or parents, including their right to appeal the decision.
6. If the decision is to conduct an evaluation, the special education administrator or designee (generally the school principal, assistant principal, or special education teacher) must:
  - a. Secure informed consent from the parent or parents for the evaluation.
    - (1) Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children.
    - (2) If the parent fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, OR



- (3) If the parent revokes consent for continuing special education and related services, SCS:
    - (a) must provide written prior notice before ceasing the provision of special education and related services (may not require a parent to provide explanation, either orally or in writing, prior to ceasing the provision of special education and related services).
    - (b) may not use mediation or due process to attempt to obtain an agreement or a ruling that services be provided the child.
    - (c) will not be in violation of the FAPE requirements (the revocation consent rule applies to revocation for all special education and related services as well as 504 services).
    - (d) is not required to convene an IEP meeting or develop an IEP for the child.
    - (e) After revocation of consent goes into effect:
      - the student is treated the same as any other non-disabled student, along with access to accommodations, if any, that are available to non-disabled students
      - the student's IEP is no longer in effect. SCPS is not required to provide FAPE, conduct a triennial re-evaluation, or hold annual IEP meetings.
      - Regular discipline rules apply. Unless intervening facts show otherwise, SCPS would not be considered to "have knowledge" of the student's disability and is not required to conduct a manifestation review.
  - b. Send appropriate paperwork to the Central within 3 business days.
  - c. Provide the parent with Prior Written Notice of the Child Study Team's determination to evaluate.
  7. Ensure that all initial evaluations are completed and that decisions about eligibility are made within 65 business days after the request for an evaluation is received in the central office. All triennial evaluations are complete on or before the last triennial anniversary.
- A. SCS Ensures Evaluation - SCS ensures that all children, aged two to 21, inclusive, who reside within its jurisdiction, who may have disabilities, and who may need special education and related services, are evaluated, including children who:
1. Are highly mobile, such as migrant and homeless children;
  2. Attend private schools, including children who are home instructed or home tutored;
  3. Are suspected of being children with disabilities and are in need of special education, even though they are advancing from grade to grade, and
  4. Are under the age of 18, suspected of having a disability and in need of special education, and who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction.
- B. SCS Selection of Evaluation Components  
 SCS conducts a full, individual, and initial evaluation before the initial provision of special education and related services to a child with a disability.

SCS prohibits personnel from requesting a child to obtain a prescription for a substance covered by the Controlled Substance Act as a condition of attending school, receiving an evaluation, or receiving services. The parent is given the opportunity to assist in the selection of the evaluation instruments. Evaluation of children suspected of having a disability consists of both informal and formal evaluations. A qualified professional assesses each child. Evaluations may include, but not be limited to, the following:

1. **Medical:** written report completed by a nurse practitioner or physician indicating general medical history and any medical/health problems which may impede learning
  - a. The hearing of each child is assessed prior to placement in the special education program
  - b. A complete audiological assessment, including assessments, which must assess inner and middle ear functioning, must be performed on each child who fails two hearing screening assessments.
2. **Educational:** written report describing current educational performance and identifying instructional strengths and weaknesses in academic skills and language performance
3. **Observation:** written report by someone other than the child's regular teacher observing the child's in a normal setting, academic setting for a child in school and home setting for a preschool child
4. **Sociocultural:** written report from a qualified school social worker that describes family history, structure and dynamics of the family, developmental and health history of the child suspected of having a disability
5. **Psychological:** written report from a qualified school psychologist or licensed clinical psychologist that addresses such data as intelligence abilities, achievement levels, behavioral concerns, or adaptive abilities dependent upon each individual child's needs
6. **Developmental:** written report of assessment of how well the child functions in the major areas of development
7. **Other evaluations as necessary provided in writing:** vision, speech/language, psychiatric, visual perception, emotional, behavior, auditory perception, and other evaluations which may require the expertise of Physical Therapists, Occupational Therapists, Medical Doctors, etc.

**C. SCS Provisions - Initial Evaluation and Reevaluation - Procedures include the following:**

1. SCS provides Written Prior Notice in the parent's or parents' native language or mode of communication unless it is clearly not feasible to do so).
2. SCS provides notice of procedural safeguards in accordance.
3. SCS provides an opportunity for an independent educational evaluation (at no cost to the parent) when the parent(s) find an error or misinformation in an evaluation.
4. SCS secures informed parental consent prior to evaluation.
5. SCS provides for the assignment of surrogate parent when necessary.
6. SCS informs parents of their rights to an impartial due process hearing.

7. SCS ensures confidentiality;
8. SCS provides opportunity for examination of records
9. SCS ensures nondiscriminatory assessments.
10. Secures consent for eligibility.

**D. SCS Determination of Needed Evaluation Data**

1. Review of existing evaluation data. As part of an initial evaluation, if appropriate, the Child Study Committee which may be comprised of the same individuals as the IEP group, and other qualified professionals, as appropriate must:
  - a. Review existing evaluation data on the child, including:
    - (1) Evaluations and information provided by the parent or parents of the child;
    - (2) A review of local and state assessments;
    - (3) Current classroom-based observations;
    - (4) Academic achievement and related developmental needs of the child;
    - (5) Observations by teachers and related services providers; and
  - b. Requires the group determining what evaluation data need to be obtained, to review local and state assessments; classroom-based observations; the academic achievement and related developmental needs of the child; and in part, determine in addition to the other considerations, what, if any, data is needed to determine the educational needs of the child in order to determine:
    - (1) Whether the child has a particular disability or disabilities;
    - (2) The present levels of performance and educational needs of the child;
    - (3) Whether the child needs special education and related services; and
    - (4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.
2. Conduct of review. The group conducting the review may conduct its review without a meeting. SCS must provide notice to ensure that the parent or parents have the opportunity to participate in the review. If there is a meeting, SCS must provide notice of the meeting early enough to ensure that the parent or parents must have an opportunity to participate. The notice must indicate the purpose, date, time, and location of the meeting and who must be in attendance.
3. Need for additional data. SCS must administer assessments and other evaluation materials as may be needed to produce the data identified in this subsection.
4. This process must be considered the evaluation, if no additional data are needed.
5. A reevaluation is completed if it is determined that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.

**E. SCS Nondiscrimination in Assessment**

SCS adheres to established policies and procedures to ensure that the following requirements are met through the training of all staff charged with the responsibility of assessment and evaluation of children suspected or eligible for special education and related services. Supervisory staff must monitor personnel to ensure nondiscrimination in the selection and administration, reporting and use of assessment results. Supervisory staff must monitor the evaluation process to ensure all required components selected for use in assessing a child under 8 VAC 20-80-54 E (Determination of Evaluation Data 1, 2, 3, and 4 meet the standards outlined below.)

1. Each Assessment and other evaluation materials used to assess a child under this chapter:
  - a. Are selected and administered so as not to be discriminatory on a racial or cultural basis, and
  - b. Must be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer.
  - c. As part of each evaluation or reevaluation, the following must occur:
    - A review of existing data, including evaluations and information provided by the parent, current classroom-based, local, or State assessments, classroom-based observations, and observation by teachers and related service providers; and
    - A determination, based on the information review and parental input, what if any additional data is necessary to determine:
      - a) Whether the child is, or continues to be a child with a disability, and the educational need of the child; and
      - b) The child's present levels of academic achievement, and related developmental needs:
  - d. If no additional data is needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, SCS must notify the child's parent to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.
2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
3. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information, including information provided by the parent, to determine whether the child is a child with a disability, and the content of the child's IEP, including information enabling the child to be involved in and progress in the general curriculum, or, for preschool children, to participate in appropriate activities.

4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
5. Any standardized assessments that are given to a child:
  - a. Have been validated for the specific purpose for which they are used; and
  - b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the assessments.
6. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualification of the person administering the assessment or the method of assessment administration) must be included in the evaluation report.
7. Any standardized assessment, administered by qualified personnel, may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.
8. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
9. Assessments are selected and administered so as to best ensure that if a assessment is administered to a child with impaired sensory, motor, or communication skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the assessment purports to measure).
10. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
11. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
12. No single measure of assessment may be used as the sole criterion for determining whether or not a student is eligible for special education and related services, or for determining an appropriate educational program for a child with a disability.
13. The evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, must complete the assessment.
14. For a child suspected of having a specific learning disability, the evaluation must include an observation of academic performance in the child's learning environment. SCS ensures appropriate observation and documentation of the child's academic performance and behavior in the areas of difficulty to determine whether a child has a SLD. The eligibility group is required to use the information obtained from the routine classroom observation or conduct a new observation. Parent consent is

- required for observations conducted after a child is suspected of having a disability and if referred for an evaluation.
15. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.
    - a. The hearing of each child suspected of having a disability must be screened during the eligibility process prior to initial determination of eligibility for special education and related services.
    - b. A complete audiological assessment, including assessments which must assess inner and middle ear functioning, must be performed on each child who is hearing impaired or deaf or who fails two hearing screening assessments.
  16. A written copy of the evaluation and documentation of the determination of eligibility must be provided to the parent or parents at no cost. The report must be available to the parent or parents no later than two business days before the meeting.

## **Evaluation and Reevaluation 8VAC20-81-70**

### **8VAC20-81-70. Evaluation and Reevaluation**

- A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section. (34 CFR 300.122)**
- B. Determination of needed evaluation data for initial evaluation or reevaluation. (34 CFR 300.305 and 34 CFR 300.507)**
  - 1. Review of existing evaluation data. A group that is comprised of the same individuals as an IEP team and other qualified professionals, as appropriate, shall:**
    - a. Review existing evaluation data on the child, including:**
      - (1) Evaluations and information provided by the parent(s) of the child;**
      - (2) Current classroom-based, local, or state assessments and classroom-based observations; and**
      - (3) Observations by teachers and related services providers; and**
    - b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine:**
      - (1) Whether the child is, or continues to be, a child with a disability;**
      - (2) The present educational needs of the child;**

- (3) The child's present level of academic achievement and related developmental needs; (4) Whether the child needs or continues to need special education and related services; and
    - (5) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
  - 2. Conduct of review. 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 shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance.
  - 3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.
  - 4. Requirements if additional data are not needed:
    - a. If the team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency shall provide the child's parent(s) with prior written notice, including information regarding:
      - (1) The determination and the reasons for it; and
      - (2) The right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.
    - b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.
    - c. The child's parent(s) has the right to resolve a dispute through mediation or due process as described in this chapter.
    - d. This process shall be considered the evaluation if no additional data are needed.
  - 5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.
- C. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.304 and 34 CFR 300.310)**
- 1. Assessments and other evaluation materials used to assess a child under this chapter are:
    - a. Selected and administered so as not to be discriminatory on a racial or cultural basis;

- b. 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;
  - c. Used for the purposes for which the assessments or measures are valid and reliable; and
  - d. Administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.
- 2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- 3. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
- 4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
- 5. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.
- 6. Any nonstandardized assessment administered by qualified personnel may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.
- 7. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- 8. Assessments are selected and administered so as to best ensure that if an assessment is administered to a child with impaired sensory, motor, or communication skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).
- 9. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- 10. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- 11. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.
- 12. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher



or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.

13. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
14. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.
  - a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.
  - b. A complete audiological assessment, including tests that will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.

**D. The evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility. (34 CFR 300.306(a)(2))**

1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.
2. The evaluation report(s) shall be provided to the parent(s) at no cost.

**E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 8VAC20-81-60 B 1 g, to ensure prompt completion of full evaluations. (34 CFR 300.304(c)(5))**

**F. Reevaluation.**

1. A reevaluation shall be conducted: (34 CFR 300.303(a) and (b)(2))
  - a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;
  - b. If the child's parent(s) or teacher requests a reevaluation; or
  - c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.
2. The local educational agency shall not conduct a reevaluation more than once a year unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the

parent(s) with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.303(b)(1))

3. The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section. (34 CFR 300.305)

**G. Parental consent for reevaluation. (34 CFR 300.300(c) and (d))**

1. Informed parental consent is required before conducting any reevaluation of a child with a disability.
  - a. If the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent(s) has failed to respond, the local educational agency shall proceed as if consent has been given by the parent(s). Reasonable measures include providing notice to the parent(s) in writing (or by telephone or in person with proper documentation).
  - b. If the parent(s) refuses consent, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures. The local educational agency does not violate its obligation under this chapter if it declines to pursue the reevaluation.
2. Parental consent is not required before:
  - a. Review of existing data as part of an evaluation or reevaluation;
  - b. A teacher's or related service provider's observations or ongoing classroom evaluations; or
  - c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
3. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8VAC20-81-150 for parentally placed students.

**H. Timelines for reevaluations.**

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.
2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days of the receipt of the referral by the special education administrator or designee for the evaluation.
3. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days.

**I. The local educational agency is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency is required**

**to provide the parent with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.305(e)(2))**

### **SCS Evaluation and Reevaluation - Process & Procedures**

Students have the same rights for a reevaluation that they have for an initial evaluation. The parent is notified that it is time for a Triennial Review, every 3 years, and given a Written Notice. The determination for new assessment components, if any, are made by the IEP Team either through a formal or informal meeting. The IEP Team in collaboration with the parent can review existing components, student data, classroom performance, observations, etc. and make a determination that a formal meeting is not necessary. Based upon a review of all existing data the IEP Team can determine that the child remains a student with a disability and qualifies for continued programs and/or services for special education through an informal meeting by phone, e-mail, etc. The IEP can continue with the current IEP as it is written. The parent would receive a copy of the Triennial Review Data and a Written Notice.

If the parent as part of the IEP Team determines that new testing is warranted, the process would be the same as Eligibility determination for new referrals.

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

- a. whether the child needs (or continues to need) special education and related services, and
  - b. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals included in the child's IEP and to participate, as appropriate, in the general education curriculum.
- C. If it is determined that additional data is needed, school personnel will ensure that tests and other evaluation materials will be completed, as necessary, to obtain the data to address issues B. 1-3, above.
- D. If no additional data is needed to address the issues above, the school-based team will provide the parent(s) with prior written notice of the decision. The prior written notice will meet all requirements detailed in the Virginia Regulations at 8 VAC 20-81-170. The notice will include information regarding the determination and the reasons for it, and the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. In addition, the school-based team will document that the parent was informed of the following:
  1. SCS is not required to conduct an evaluation if the team has determined that it has enough information to determine whether the child is or continues to be a child with a disability and to determine the child's educational needs, unless the parent(s) request an evaluation for these specific purposes:
    - review of the information that conforms with the required process will be considered the evaluation if no additional data are needed;
    - the parent has the right to appeal the decision through the use of mediation or due process proceedings.
- E. If the school-based team determines not to evaluate a child suspected of a disability, it must provide the parent with a prior written notice that meets all requirements detailed in the Virginia Regulations, at 8 VAC 20-81-170, including the parent's rights to appeal the decision through due process proceedings.
- F. School personnel will obtain informed parental consent before conducting any evaluations or reevaluations. For a reevaluation, if SCS can demonstrate reasonable measures to obtain consent and that the child's parent failed to respond, SCS will proceed with the evaluation as if consent has been received. To demonstrate reasonable measures, SCS will have provided notice to the parent in writing at least twice and will have contacted the parent by phone if the parent has a phone.
  1. If the parent refuses consent, SCS may pursue those evaluations by using due process hearing procedures or mediation, but the school division is

not required to do so.

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

**G. A variety of evaluation or assessment tools and strategies, sufficiently comprehensive to identify all of the child's special education and related services needs (whether or not commonly linked to the disability category used for the child's classification), will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).**

1. This information will be used to determine whether the child is a child with a disability, the child's educational needs, and the content of the child's IEP. No single measure will be used as a sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

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

**I. All evaluation assessments and materials will be selected and administered to ensure no racial or cultural bias. In addition, evaluations will be provided and administered in the child's native language and in ways that are most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.**

1. All assessments will be used for the purposes for which they are valid and reliable and will be administered by personnel that are trained and knowledgeable regarding the instructions provided by the producer of the assessments.
2. Assessment tools will be selected to assess specific areas of educational need rather than produce a single general intelligence quotient.

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

- N. If a child transfers to SCS during the evaluation process, the SCS will work with the child's previous school and/or school division to ensure that the child's evaluation and eligibility determination process is promptly completed. In this instance, the 65 business timeline for the completion of the evaluation and eligibility process may be extended if the following requirements are met:
1. the parent and the child-study team agree to extend the timeline and set a mutually-agreeable date upon which the evaluation and eligibility process will be completed, and
  2. sufficient progress is being made to ensure a prompt completion of the evaluation.
- O. Reevaluations will be conducted at least every three years, unless SCS and the parent agree that a reevaluation is not necessary.
- P. Reevaluations may be conducted more frequently if SCS determines that it needs new information to determine child's educational or related services needs, including improved academic achievement and functional performance, or if the parent(s) or teacher(s) request a reevaluation. Upon the request from a parent or teacher, the child's child-study team, consistent with the make-up of the IEP team, will convene to discuss the request and determine what, if any, evaluation components will be conducted. Evaluations will not be conducted more than once per year unless the parent and SCS agree otherwise. Prior written notice that meets the requirements in the Virginia Regulations, at 8 VAC 20-81-170 C., will be provided the parent of the decision regarding the reevaluation request.
- Q. For a child who is home-schooled, home-tutored, or who is parentally-placed in a private school at the parent's expense, SCS is not permitted to use mediation or due process to pursue consent from a parent who refuses to provide consent for an evaluation or reevaluation, or who fails to respond to a request for consent. In this instance, the child will not be evaluated, and will not be eligible for equitable services as a parentally placed student under 8 VAC 20-81-150 of Virginia Regulations.
- R. SCS will not be required to evaluate a student solely because the student is graduating with a standard or advanced diploma, even though this will be considered a change in placement. Prior written notice, however, will be provided to parent(s) informing them that upon graduation the child will no longer be eligible for special education and related services. In addition, the SCS will ensure that all other requirements of the Virginia Regulations, at 8 VAC 20-81-170, regarding prior written notice, will be met.
- S. Notice and Parental Consent
1. SCS gives written notification to the parent(s).
  2. SCS must obtain parental consent to evaluate a child suspected of having a SLD who has not made adequate progress when provided appropriate instruction, and whenever a child is referred for an evaluation.

- a. If the parent fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, or
  - b. If the parent revokes consent for continuing special education and related services,
  - c. SCS:
    - (1) must provide written prior notice before ceasing the provision of special education and related services.
    - (2) may not use mediation or due process to attempt to obtain an agreement or a ruling that services be provided the child.
    - (3) will not be in violation of the FAPE requirements
    - (4) is not required to convene an IEP meeting or develop an IEP for the child.
3. Parental consent is not required before gathering new evaluation data.
- a. If SCS can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent or parents have failed to respond, SCS may proceed as if consent has been given by the parent or parents. Reasonable measures may include contacts by telephone or in person with proper documentation. Two attempts to contact the parent with documentation may be considered reasonable.
  - b. If the parent refuses to give consent for a reevaluation, SCS may continue to pursue those evaluations by using due process or mediation procedures.
  - c. The consent override option is not permitted for children who are home-schooled or parentally-placed in private schools. Additionally, SCS is not required to consider the child eligible for services under requirements related to parentally-placed private school children with disabilities.
4. Parental consent is not required before:
- a. Review of existing data as part of an evaluation or reevaluation; or
  - b. A teacher's related service provider's observations or ongoing classroom evaluations.
  - c. To complete a screening.
  - d. If a child is a ward of the state and is not residing with a parent, SCS is not required to obtain informed consent from a parent for an initial evaluation to determine whether a child is a child with a disability if:
    - (1) Despite reasonable efforts, SCS cannot discover the parent's whereabouts;
    - (2) The parent's rights have been terminated; or
    - (3) The rights of the parent to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by the individual appointed by the judge to represent the child.



#### **T. Timelines**

1. Evaluations must be completed within **65 business days** of the receipt of the referral by the special education administrator or designee for completion of evaluations and eligibility.
2. If the reevaluation is the evaluation required every three years, the evaluation must be initiated no less than **65 business days** prior to the third anniversary of the date eligibility was last determined. The evaluation must be completed in **65 business days**. The following exceptions to the timelines apply:

##### **First Exception**

- A child transfers from one LEA to another after the evaluation process has been initiated, but prior to an eligibility determination being made. In such cases, if “sufficient progress” is being made to ensure a “prompt completion” of the evaluation, the parent and the child’s new LEA may agree to a specific time by which the evaluation must be completed, which may be beyond the 65 business day timeframe. However, the prior and subsequent LEA are required to coordinate their efforts, as “expeditiously as possible,” to ensure “prompt completion” of the evaluation.

##### **Second Exception**

- If the parent repeatedly fails or refuses to produce the child for the evaluation.
3. The parent and eligibility group may agree in writing to extend the mandated timeline to obtain additional data that cannot be obtained within the timeframe.

#### **U. Local Procedures Pertaining to Transfer Children**

1. When a child transfers to a Scott County school and the parent indicates that the child was in a special education program or was in the evaluation process to be evaluated for special education, the principal/designee must call the previous school, and document appropriately.
2. A copy of Virginia Special Education Procedural Safeguard Requirements under the Individuals with Disabilities Act document must be given to the parent(s). If the child is a child with a disability, and the parent(s) and SCS cannot agree on the interim services, SCS must implement the existing IEP until a new IEP is developed and implemented.
3. If the child is in the process of an evaluation, SCS must continue with the evaluation process started by the sending LEA. However, if for some reason, the child has delayed registering in a Scott County

School, the parent and SCS may agree to extend the evaluation timeline but not exceeding the amount of time delayed between schools. This agreement must be in writing with parental consent and accompanied by an explanation as to why the timeline for assessment has been extended.

4. The parent must complete an exchange of information form in order to obtain appropriate information from the sending LEA, medical doctor, or any other agency involved with the child.
5. Comparable special education programs and services must be provided until SCS either adopts the previous IEP or develops a new one (not to exceed 30 days from the time the school was made aware that the child was in special education).
6. When an IEP meeting is scheduled, and the parent does not respond, up to three attempts must be made to get the parent to attend the IEP meeting.
7. Assuming an IEP has been received, the following options are available:
  - (4) Accept the transfer IEP
  - (5) Modify the IEP within 30 days
  - (6) Write a new IEP within 30 days
  - (7) Use the IEP as an interim IEP until new components are completed. This would require the IEP group to decide upon the evaluation components.
8. If SCS determines that a child from out-of-state requires an evaluation, the evaluation is not considered a reevaluation, but is an initial evaluation.

## **ELIGIBILITY**

### **8 VAC 20-81-80**

The Administrator of Special Education or designee maintains a record of the date of referral for evaluation, projected dates for reevaluations and the date(s) parents or guardians(s) are notified of the decision not to reevaluate is made. Once evaluation for special education and related services is complete, an eligibility meeting is scheduled to review all data in order to make an appropriate placement decision in meeting the needs of the child. The child's parent or parents are invited to the meeting. If any member of the Eligibility Committee (made up of the same members as the IEP group) disagrees with the placement decision, they are to put in writing their objections and attach to the Eligibility Minutes. If the parent disagrees with the placement decision, they are to be informed of their due process rights. SCS strives to reach a consensus of opinion in any and all decisions pertaining to the child. SCS has policies and procedures for determining whether or not a student is eligible for special education and related services as a student with a Specific Learning Disability. SCS initially uses the discrepancy model (20 pts.) between the Full Scale IQ and Standard Scores in achievement to identify a child with specific learning disabilities; in addition, SCS evaluates strategies previously tried for remediation, past and current assessment data, the success or lack of success in the general curriculum (present and past) for those students who are questionable or have borderline scores when using the discrepancy model.

#### **Parent Participation in Eligibility**

SCS makes reasonable attempts to contact the parent or parents for an eligibility meeting. Attempts may be made in person, by phone, by e-mail, etc., with appropriate documentation. If the parent does not respond to the notice, the meeting must be held as though permission had been given. Notices must be given in a timely manner in order to provide the parent or parent's time to respond. If the eligibility meeting is held without parent participation, the eligibility minutes and evaluation data must be sent to the parent or parents. Parental Rights and Procedural Safeguards must also be sent to the parent so that they may be informed of their right to due process in case they disagree to the Eligibility Committee findings.

#### **8 VAC 20-81-80 Eligibility**

**A. Each local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services and educational needs is made in accordance with the provisions of this section.**

- B. The determination that a child is eligible for special education and related services shall be made on an individual basis by a group as designated in subdivision C 2 of this section.**
- C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110. (34 CFR 300.306, 34 CFR 300.308)**
- 1. The determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:**
    - a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;**
    - b. Interpret assessment and intervention data, and apply critical analysis to those data; and**
    - c. Develop appropriate educational and transitional recommendations based on the assessment data.**
  - 2. The eligibility group composition.**
    - a. The group may be an IEP team, as defined in 8VAC20-81-110, as long as the above requirements and notice requirements of 8VAC20-81-170 are met.**
    - b. The group shall include, but not be limited to:**
      - (1) Local educational agency personnel representing the disciplines providing assessments;**
      - (2) The special education administrator or designee;**
      - (3) The parent(s);**
      - (4) A special education teacher;**
      - (5) The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and**
      - (6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.**
- D. Procedures for determining eligibility and educational need. (34 CFR 300.306 through 34 CFR 300.311)**
- 1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:**
    - a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and**

- b. Ensure that information from all these sources is documented and carefully considered.
- 2. The group shall provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.
- 3. Observation.
  - a. The local educational agency shall ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
  - b. The eligibility group, in determining whether a child is a child with a disability shall:
    - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
    - (2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.
  - c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.
- 4. A child shall not be determined to be eligible under this chapter if the child does not otherwise meet the eligibility criteria, or the determinant factor is:
  - a. Lack of appropriate instruction in reading, including the essential components of reading instruction:
    - (1) Phonemic awareness,
    - (2) Phonics,
    - (3) Vocabulary development,
    - (4) Reading fluency, including oral reading skills, and
    - (5) Reading comprehension strategies;
  - b. Lack of appropriate instruction in math; or
  - c. Limited English proficiency.
- 5. The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. This documentation shall include a statement of:
  - a. Whether the child has a specific disability.
  - b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.
  - c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
  - d. The educationally relevant medical findings, if any.
  - e. The instructional strategies used and the student-centered data collected if the child has participated in a response to scientific, research-based intervention process. This document shall also include:

- (1) The local educational agency's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected;
    - (2) The strategies that were used to increase the child's rate of learning; and
    - (3) The parent's right to request an evaluation.
  - f. For identification of a child with a specific learning disability, whether consistent with the requirements of subdivisions T 2 a and T 2 b of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and
    - (1) The child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or
    - (2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards or intellectual development.
  - g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T 2 c of this section.
6. The eligibility group shall consider, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with § 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel. There shall be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.
  7. The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall submit a written statement presenting that member's conclusions.
  8. The local educational agency shall obtain written parental consent for the initial eligibility determination. Thereafter, written parental consent shall be secured for any change in categorical identification in the child's disability.
  9. The eligibility group shall have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. The written summary shall include any written statement from a member whose conclusion differs from the other members' determination. The summary statement may include other recommendations. The written summary shall be maintained in the child's scholastic record.
  10. The written summary shall be forwarded to the IEP team, including the parent, upon determination of eligibility. The summary statement may include other recommendations.
  11. With reevaluations, if the eligibility group determines that there is not a change to the child's eligibility for special education and related services, and educational needs, the IEP team is not required to convene, unless the parent requests that the IEP team meets.

- E. Nothing in this chapter requires that children be identified by their disability on IEPs,** local educational agency communications to parents regarding eligibility determinations, or other similar communications to parents. For such communications, local educational agencies shall identify that each child has a disability under this chapter and by reason of that disability needs special education and related services, and is regarded as a child with a disability.
- F. Eligibility for related services.** A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team. (34 CFR 300.34 and 34 CFR 300.306(c)(2))
- G. Two-year-old children previously served by Part C.** A child, aged two, previously participating in early intervention services assisted under Part C of the Act, shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age two, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child. (34 CFR 300.124)
- H. For all children suspected of having a disability,** local educational agencies shall:
1. Use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and
  2. Have documented evidence that, by reason of the disability, the child needs special education and related services. (34 CFR 300.307(b))
- I. The Virginia Department of Education permits** each local educational agency to use a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and permits each local educational agency to use other alternative research-based intervention and procedures. (34 CFR 300.307)
- J. Eligibility as a child with autism.** The group may determine that a child has autism if:
1. There is an adverse effect on the child's educational performance due to documented characteristics of autism, as outlined in this section; and
  2. The child has any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references.
    - a. Children with Asperger's Disorder demonstrate the following characteristics:
      - (1) Impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to

developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); or lack of social or emotional reciprocity are noted; and

(2) Restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.

b. Children with autistic disorder, in addition to the characteristics listed in subdivisions 2 a (1) and 2 a (2) of this subsection, also demonstrate impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.

c. Children with Pervasive Developmental Disorder - Not Otherwise Specified or Atypical Autism may display any of the characteristics listed in subdivisions 2 a (1), 2 a (2) and 2 b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

**K. Eligibility as a child with deaf-blindness.** The group may determine that a child has deaf-blindness if the definition of "deaf-blindness" as outlined in 8VAC20-81-10 is met.

**L. Eligibility as a child with deafness.** The group may determine that a child has deafness if:

1. The definition of "deafness" is met in accordance with 8VAC20-81-10;
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of a deafness, as outlined in subdivision 3 of this subsection; and
3. The child has a bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), and/or cortical deafness.

**M. Eligibility as a child with developmental delay.** (34 CFR 300.111(b))

1. The group may determine that a child has a developmental delay if the local educational agency permits the use of developmental delay as a disability category when determining whether a preschool child, aged two by September 30 through six, inclusive, is eligible under this chapter, and:
  - a. The definition of "developmental delay" is met in accordance with 8VAC20-81-10; or



- b. The child has a physical or mental condition that has a high probability of resulting in a developmental delay.
  2. Eligibility as a child with a disability for children ages two through six shall not be limited to developmental delay if eligibility can be determined under another disability category.
  3. A local educational agency is not required to adopt and use developmental delay as a disability category for any children within its jurisdiction. If the local educational agency permits the use of developmental delay as a disability category, it shall comply with the eligibility criteria outlined in this section.
- N. Eligibility as a child with an emotional disability. The group may determine that a child has an emotional disability if:
  1. The definition of "emotional disability" is met in accordance with 8VAC20-81-10; and
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an emotional disability.
- O. Eligibility as a child with a hearing impairment.
  1. The group may determine that a child has a hearing impairment if:
    - a. The definition of "hearing impairment" is met in accordance with 8VAC20-81-10; and
    - b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of a hearing impairment, as outlined in subdivision 2 of this subsection.
  2. Characteristics of children with a hearing impairment include unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dys-synchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance.
  3. The term "hard of hearing" may be used in this capacity.
- P. Eligibility as a child with an intellectual disability. The group may determine that a child has an intellectual disability if:
  1. The definition of "intellectual disability" is met in accordance with 8VAC20-81-10;
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an intellectual disability, as outlined in subdivision 3 of this subsection; and
  3. The child has:
    - a. Significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the assessment, on an individually administered, standardized measure of intellectual functioning;
    - b. Concurrently, significantly impaired adaptive behavior as determined by a composite score on an individual standardized instrument of adaptive behavior that measures two standard deviations or more below the mean; and

- c. Developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.
- Q. Eligibility as a child with multiple disabilities. The group may determine that a child has multiple disabilities if the definition of "multiple disabilities" is met in accordance with 8VAC20- 81-10.
- R. Eligibility as a child with an orthopedic impairment. The group may determine that a child has an orthopedic impairment if:
1. The definition of "orthopedic impairment" is met in accordance with 8VAC20-81-10; and
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an orthopedic impairment.
- S. Eligibility as a child with other health impairment. The group may determine that a child has an other health impairment if:
1. The definition of "other health impairment" is met in accordance with 8VAC20-81-10; and
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of the other health impairment.
- T. Eligibility of a child with a specific learning disability. (34 CFR 300.307 and 34 CFR 300.309)
1. The group may determine that a child has a specific learning disability if:
    - a. The definition of "specific learning disability" is met in accordance with 8VAC20-81-10; and
    - b. The criteria for determining the existence of a specific learning disability are met.
  2. The criteria for determining the existence of a specific learning disability are met if:
    - a. The child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Virginia-approved grade-level standards:
      - (1) Oral expression;
      - (2) Listening comprehension;
      - (3) Written expression;
      - (4) Basic reading skills;
      - (5) Reading fluency skills;
      - (6) Reading comprehension;
      - (7) Mathematical calculations; or
      - (8) Mathematical problem solving.
    - b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 2 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance,

achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70.

- c. The group determines that its findings under subdivisions 2 a and b of this subsection are not primarily the result of:
  - (1) A visual, hearing, or motor impairment;
  - (2) Intellectual disability;
  - (3) Emotional disability;
  - (4) Environmental, cultural, or economic disadvantage; or
  - (5) Limited English proficiency.
- 3. The Virginia Department of Education does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. (34 CFR 300.307(a))

**U. Eligibility as a child with speech or language impairment.**

- 1. The group may determine that a child has a speech or language impairment if:
  - a. The definition of "speech or language impairment" is met in accordance with 8VAC20-81-10;
  - b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of speech or language impairment;
  - c. The child has a significant discrepancy from typical communication skills in one or more of the following areas: fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and
  - d. Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment.
- 2. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of sociocultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.
- 3. Speech language pathology services may be special education or a related service.

**V. Eligibility as a child with a traumatic brain injury.** The group may determine that a child has a traumatic brain injury if:

- 1. The definition of "traumatic brain injury" is met in accordance with 8VAC20-81-10; and
- 2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of traumatic brain injury.

**W. Eligibility as a child with a visual impairment.**

- 1. The group may determine that a child has a visual impairment if:

- a. The definition of "visual impairment" is met in accordance with 8VAC20-81-10;
- b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of visual impairment; and
- c. The child:
  - (1) Demonstrates the characteristics of blindness or visual impairment, as outlined in subdivisions 2 and 3 of this subsection; or
  - (2) Has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision, which may in the future, have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.
- 2. A child with blindness demonstrates the following:
  - a. Visual acuity in the better eye with best possible correction of 20/200 or less at distance or near; or
  - b. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.
- 3. A child with a visual impairment demonstrates the following:
  - a. Visual acuity better than 20/200 but worse than 20/70 at distance and/or near; or
  - b. Visual field restriction in the better eye of remaining visual field of 70 degrees or less but better than 20 degrees.

**X. Children found not eligible for special education.**

- 1. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence. (34 CFR 300.622)
- 2. If the school division decides that a child is not eligible for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures. (34 CFR 300.503; 34 CFR 300.507)

**SCS 65-Day Timeline Begins-Procedures**

- A. **The special education coordinator stamps** the parent permission for testing on initial referrals to indicate when the 65-day timeline begins. The special education coordinator stamps received on the Evaluation Review for a triennial evaluation to indicate when the 65 day timeline begins. Children are tracked and a list of expected due dates is made available to each individual responsible for components of the evaluation. The office of special education sends a triennial list to special education teachers each semester to guarantee

that the evaluation process is begun in a timely manner. Projected due dates are provided to teachers so that they must be sure and meet the third anniversary date. Special education teachers are responsible for contacting any related service personnel to ensure that they are informed of the evaluation timelines. If it appears that a timeline is getting close and very little or no evaluation data is received by the special education office, a personal contact is made to the child's case manager. The decision regarding eligibility for special education and related services is made within 65 business days after the referral for evaluation is received for an initial evaluation, not later than the third anniversary of the date the child was last found eligible for special education and related services, or within 65 business days after the parent or parents are notified of the decision not to reevaluate.

**B. Review of Data for Eligibility**

Upon completion of an evaluation, a group of qualified professionals and the parent of the child determine whether the child is a child with a disability and the educational needs of the child.

1. The group must include, but not be limited to, local educational agency personnel representing the disciplines providing tests, the special education administrator or designee (in Scott County this person is the building principal or designee) and the parent or parents, the student as appropriate, a special education teacher, and a general education teacher (unless the child is in preschool and not of the age to attend K in the forth coming year.
2. At least one member within the school system must have either assessed or observed the child.
3. The group may be an IEP group as long as the above requirements and notice requirements are met.
4. If determining whether the child is suspected of having a specific learning disability is a child with a disability, the group must include:
  - a. The child's regular teacher
    - (1) If the child does not have a regular, a regular classroom teacher qualified to teach a child of that age; or
    - (2) For a child less than school age, an individual qualified to teach a child of that age, and
  - b. At least one person qualified to conduct diagnostic examinations of children, such as school psychologist, speech-language pathologist, teacher of specific learning disabilities, or teacher of remedial reading.

**C. Procedures for Determining Eligibility**

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, SCS must:
  - a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, adaptive behavior; and
  - b. Ensure that information from all these sources is documented and carefully considered.

2. The group must provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.
3. A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in reading, including in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension strategies), a lack of instruction in math, or due to limited English proficiency.
4. The group making the decision regarding the child's eligibility must work toward consensus. Parental consent must be obtained for the initial eligibility determination. Thereafter, parental consent must be secured for any change in identification. The Eligibility Committee must have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. This summary is to be signed by all members. Dissenting members are to attach their objections in writing. The written summary must be maintained in the child's scholastic records.
5. A copy of the evaluation report and documentation of the eligibility determination made available to the parent at no cost.
6. The summary statement of the group's essential deliberations must be forwarded to the IEP Group upon determination of eligibility. The summary statement may include other recommendations.
  - a. Each group member must certify in writing whether the report reflects his/her conclusions. If the group does not reach consensus and the report does not reflect a particular member's conclusion, then the group member must submit a separate statement presenting the member's conclusions.
  - b. No changes must be made to a child's eligibility for special education and related services without parental consent.
7. Policies and procedures, which are consistent with the VDOE's state criteria, are in place for determining whether or not a child is eligible for special education and related services as a child with a Specific Learning Disability. For a child suspected of having a specific learning disability, the documentation of the group's determination of eligibility must also include a statement of:
  - a. Whether the child does not achieve adequately for the child's age or to meet VDOE-approved grade-level standards; and whether the child does not make sufficient progress to meet age or VDOE-approved grade-level standards, or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards or intellectual development;
  - b. The basis for making the determination;
  - c. The relevant behavior noted during the observation of the child in the child's learning environment;
  - d. The relationship of the behavior to the child's academic functioning;
  - e. The educationally relevant medical findings
  - f. Whether there is a severe discrepancy between the child's achievement and ability (20 points with a 90% confidence level) that is not

correctable without special education and related services in addition to documentation and the evidence that intervention strategies from the classroom teacher, Title I teacher and/or Reading Specialist indicates little or no gain. The school psychologist takes student performance, behavior; student history in the home and at school, and all test data into consideration when compiling the psychological.

- g. The determination of the group concerning the effects of any environmental, cultural, or economic disadvantage.
- 8. A child suspected of having a specific learning disability is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. For this observation, the eligibility group either:
  - a. Uses information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
  - b. Has at least one member of the eligibility group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.
  - c. If a child is less than school age or out of school, an eligibility group member observes the child in an environment appropriate for a child of that age.
- 9. Prior to determining that a child is eligible for special education and related services as a child with a specific learning disability, to ensure that the underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility group considers, as part of the evaluation:
  - a. Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction, which was provided to the child's parents.
- 300.309(b)
- 10. By mutual written agreement with the parent, the eligibility group may extend the evaluation and eligibility timeline to obtain additional data.

**D. Eligibility for Related Services.** A child with a disability must be found eligible for special education in order to receive related services. Related services are those supportive services that are required to assist a child with a disability to benefit from special education. Once a child is found eligible for special education, decisions about the need for related services are made by and added to the IEP by the IEP group. An evaluation may be conducted, if needed.

**E. Eligibility of Two-Year-Old Children.** A child, aged two, previously served by Part C of the Individuals with Disabilities Education Act (IDEA) must meet the requirements of this chapter to be determined eligible under Part B of the IDEA.

**F. Eligibility as a Child with a Developmental Delay.**

1. SCS includes developmental delay as one of the disability categories when determining whether a preschool child, aged two to five, inclusive, is eligible for special education and related services. SCS includes developmental delay as one of the disability categories when determining whether a school-aged child, 2 through 6, inclusive, is eligible under this chapter. A 35% delay in two or more areas or a 40% delay in one area with documentation that one of the skill areas is also being affected qualifies a child as developmentally delayed in SCS. These skill areas include: social and emotional, fine and gross motor, visual perception, reasoning, and receptive and expressive language. Other disability categories may be used if appropriate for the child.

**G. Eligibility Determination for Specific Learning Disability**

A child may be determined eligible for special education and related services as a child with a specific learning disability if:

1. The child does not achieve adequately for the child's age or meet VDOE approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or VDOE-approved grade level standards.
  - a. Oral expression
  - b. Listening comprehension
  - c. Written expression
  - d. Basic reading skills
  - e. Reading comprehension
  - f. Reading Fluency
  - g. Mathematical calculations
  - h. Mathematical problem solving
2. For a child suspected of having a specific learning disability, the documentation of the eligibility determination contains a statement of:
  - a. Whether the child does not make sufficient progress to meet age or VDOE-approved grade-level standards in one or more of the above eight areas when using a process based on the child's response to intervention; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards, or intellectual development that is determined by the eligibility group to be relevant to the identification of a specific learning disability, using appropriate assessments.
  - b. The determination of the eligibility group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage ; or limited English proficiency on the child's achievement level; and
  - c. If the child has participated in a process that assesses the child's response to scientific, research-based intervention,
    - (1) the instructional strategies used and the child-centered data collected; and
    - (2) the documentation that the child's parents were notified about Virginia's policies regarding the amount and nature of child



performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

3. The group may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:
  - a. A visual, hearing, or motor disability;
  - b. Mental retardation;
  - c. Emotional disturbance; or
  - d. Environmental, cultural, or economic disadvantage; or
  - e. Limited English proficiency on the child's achievement level; or
  - f. Lack of appropriate instruction in reading; or
  - g. Lack of appropriate instruction in math.
4. SCS ensures the following additional procedures regarding the eligibility determination for those students who have questionable scores when using the 20 pt. discrepancy model or who are borderline and additional data is needed:
  - a. A child must not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in reading, including in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension strategies), a lack of instruction in math, or due to limited English proficiency.
5. SCS incorporates teaching strategies using scientific research-based procedures as an intervention to assist students with learning. Response to Intervention strategies are in place as interventions for any child behind their peers in school. Once the classroom teacher has identified those students who are struggling, a referral is made to the Title I teacher for services. The Title I teacher puts into place additional teaching strategies to assist the child. After a period of 9-weeks if the student shows little success, a referral is made to the Reading Specialist to incorporate additional learning strategies. If the child continues to struggle, a referral is made to special education. At Eligibility, the team considers the psychological report and all data related to student in determining eligibility. Data may include, but not be limited to:
  - a. Strategies tried by the general classroom teacher,
  - b. SOL Test Scores (less than 380 in reading and/or math),
  - c. PALS Test Scores (6 months or more below grade level),
  - d. STAR Test Scores (performing 2 grade levels below peers),
  - e. ASSESS Test Scores (has not shown a 15% gain in the previous year),
  - f. Sight Word List of High Frequency Words (less than 70% success),
  - g. Failed one-year or more in reading and/or math,
  - h. Functioning 2-years below peers in reading and/or math on diagnostic tests in A+ or River Deep, and
  - i. Other evaluations presented by the parent.
  - j. Assistance by the Title I teacher with little or no success.
  - k. Assistance by the Reading Specialist with little or no success.

6. Strategies may not be a hindrance for referral to special education, and the parent must be informed of all intervention strategies employed as part of eligibility. A copy of all data pertaining to interventions that is reviewed at the time of Eligibility is given to the parent.
- H. **No Requirement for Disability Identification.** Nothing requires that children be identified by their disability, as long as each child has a disability and by reason of that disability needs special education and related services and is regarded as a child with a disability. Children with disabilities may be identified as having more than one disability.
  - I. **Child Found Not Eligible** - Information relevant to instruction for a child found not eligible for special education must be provided to the child's teachers or any appropriate committee. Parental consent to release information must be secured for children in private schools, as necessary.
  - J. **IEP Timeline** - If the determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child within *30 calendar days* from eligibility.
  - K. **Child's Status---Previous Enrollment in Special Education**
    1. If a child with a disability has been receiving special education from one local educational agency in Virginia and transfers to SCS, we are responsible for ensuring that the child has available special education and related services in conformity with the existing IEP.
      - a. SCS must adopt and implement the existing IEP of the former local educational agency with consent of the parent or parents or develop a new IEP for the child, or adopt and implement the existing IEP with identified modifications with consent of the parent or parents, or develop a new IEP for the child. Interim services agreed to by both the parent or parents and SCS may be implemented until a new IEP is developed and in place.
      - b. If the parent or parents and SCS are unable to agree on interim services, SCS must implement the existing IEP until a new IEP is developed and implemented.
    2. When a child with a disability under IDEA transfers to SCS from another state, SCS must decide whether to adopt the most recent evaluation and IEP developed for the child by the local educational agency in the previous state. SCS must determine, as an initial matter, whether the child has a disability and whether the most recent evaluation of the child conducted by the local education agency (LEA) in the previous state and the IEP developed by that LEA meet the requirements of IDEA and this chapter. This applies to transfers "in the same school year."
      - a. If SCS accepts the determination made by the LEA that the child has a disability in the previous state and adopts that LEA's evaluation, SCS' must provide notice to the child's parent(s).
      - b. If SCS determines that the IEP developed by the school division in the previous state meets the requirements of IDEA. SCS must:

- (1) Serve the child consistent with the IEP if a copy of the IEP is available, if the parent or parent's consent to the implementation of the IEP, and if the local educational agency believes the IEP is appropriate for the child; or
    - (2) Conduct an IEP meeting without undue delay if the parent or parents and SCS are not satisfied with the IEP developed for the child in the previous state or a revision to the IEP is indicated for other reasons, in no case later than 30 calendar days after the date the local educational agency determined that it would accept the evaluation and eligibility determination from the previous state. The most recent IEP must be implemented until the new IEP is developed and agreed upon.
  - c. If SCS does not adopt the previous state's evaluation of the transferring child or does not receive a copy of the evaluation, SCS must provide proper notice, initiate evaluation procedures, and conduct the evaluation in accordance with this chapter. When a child transfers from another state to SCS, a determination for a test must be made. If SCS determines that an evaluation is necessary, the evaluation is not considered a reevaluation, but is an initial evaluation.
    - (1) During the evaluation, the child must receive services in accordance with the existing IEP excluding the sections of the IEP that are not in accordance with this chapter. The local educational agency must inform the parent or parents of the sections of the existing IEP that are not in accordance with this chapter.
    - (2) Once the evaluation is completed and eligibility has been determined, an IEP meeting must be held without undue delay, but no later than 30 calendar days after the date the child is determined to be eligible, to develop an appropriate IEP for the child.
  - d. If the child's parent or parents disagree with SCS evaluation or proposed IEP, they may initiate a due process hearing. During the pendency of the hearing, the child may be placed in the program developed by the IEP group with consent of the parent or parents or in another placement agreeable to the parent or parents and SCS. If the parent or parents do not agree to place the child in the program proposed by the IEP group and no other interim placement can be agreed upon, SCS is not required to implement the IEP developed by the school division in the previous state or to approximate the services in that IEP during the pendency of the due process proceedings.
3. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to SCS, SCS must review the current placement and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act Group receives written notification of the child's residence in the new locality from the former Comprehensive Services Act Group.

## **SCS Special Education Process**

### **A. Process for Determining Eligibility**

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, SCS must:
  - a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, adaptive behavior; and
  - b. Ensure that information from all these sources is documented and carefully considered.
2. The group must provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.
3. A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in reading, including in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension strategies), a lack of instruction in math, or due to limited English proficiency.
4. The group making the decision regarding the child's eligibility must work toward consensus. Parental consent must be obtained for the initial eligibility determination. Thereafter, parental consent must be secured for any change in identification. The Eligibility Committee must have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. This summary is to be signed by all members. Dissenting members are to attach their objections in writing. The written summary must be maintained in the child's scholastic records.
5. A copy of the evaluation report and documentation of the eligibility determination made available to the parent at no cost.
6. The summary statement of the group's essential deliberations must be forwarded to the IEP Group upon determination of eligibility. The summary statement may include other recommendations.
  - a. Each group member must certify in writing whether the report reflects his/her conclusions. If the group does not reach consensus and the report does not reflect a particular member's conclusion, then the group member must submit a separate statement presenting the member's conclusions.
  - b. No changes must be made to a child's eligibility for special education and related services without parental consent.
7. Policies and procedures, which are consistent with the VDOE's state criteria, are in place for determining whether or not a child is eligible for special education and related services as a child with a Specific Learning Disability. For a child suspected of having a specific learning disability, the

documentation of the group's determination of eligibility must also include a statement of:

- a. Whether the child does not achieve adequately for the child's age or to meet VDOE-approved grade-level standards: and whether the child does not make sufficient progress to meet age or VDOE-approved grade-level standards, or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards or intellectual development;
  - b. The basis for making the determination;
  - c. The relevant behavior noted during the observation of the child in the child's learning environment;
  - d. The relationship of the behavior to the child's academic functioning;
  - e. The educationally relevant medical findings
  - f. Whether there is a severe discrepancy between the child's achievement and ability (20 points with a 90% confidence level) that is not correctable without special education and related services in addition to documentation and the evidence that intervention strategies from the classroom teacher, Title I teacher and/or Reading Specialist indicates little or no gain. The school psychologist takes student performance, behavior: student history in the home and at school, and all test data into consideration when compiling the psychological.
  - g. The determination of the group concerning the effects of any environmental, cultural, or economic disadvantage.
8. A child suspected of having a specific learning disability is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. For this observation, the eligibility group either:
- a. Uses information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
  - b. Has at least one member of the eligibility group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.
  - c. If a child is less than school age or out of school, an eligibility group member observes the child in an environment appropriate for a child of that age.
9. Prior to determining that a child is eligible for special education and related services as a child with a specific learning disability, to ensure that the underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility group considers, as part of the evaluation:
- a. Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction, which was provided to the child's parents.

300.309(b)

10. By mutual written agreement with the parent, the eligibility group may extend the evaluation and eligibility timeline to obtain additional data.
- B. Eligibility for Special Education and Related Services.** A child with a disability must be found eligible for special education in order to receive related services. Related services are those supportive services that are required to assist a child with a disability to benefit from special education. Once a child is found eligible for special education, decisions about the need for related services are made by and added to the IEP by the IEP group. An evaluation may be conducted, if needed.
1. The determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:
    - a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;
    - b. Interpret assessment and intervention data, and apply critical analysis to those data; and
    - c. Develop appropriate educational and transitional recommendations based on the assessment data.
  2. The eligibility group composition.
    - a. The group may be an IEP team, as defined in 8VAC20-81-110, as long as the above requirements and notice requirements of 8VAC20-81-170 are met.
    - b. The group shall include, but not be limited to:
      - (1) Local educational agency personnel representing the disciplines providing assessments;
      - (2) The special education administrator or designee;
      - (3) The parent(s);
      - (4) A special education teacher;
      - (5) The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and
      - (6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.
- C. Upon completion of the administration of assessments** and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110. (34 CFR 300.306, 34 CFR 300.308)
- D. Process for determining eligibility and educational need.** (34 CFR 300.306 through 34 CFR 300.311)

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the SCS will:
  - a. Draw upon information from a variety of sources, including response to scientifically-based interventions, to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility. SCS will not delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented. SCS will also draw from the following data: aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
  - b. Ensure that information from all these sources is documented and carefully considered.
2. Provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.
3. Observation.
  - a. SCS ensures that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
  - b. The eligibility group, in determining whether a child is a child with a disability shall:
    - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
    - (2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.
  - c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.
4. A child shall not be determined to be eligible under this chapter if the child does not otherwise meet the eligibility criteria, or the determinant factor is:
  - a. Lack of appropriate instruction in reading, including the essential components of reading instruction:
    - (1) Phonemic awareness,
    - (2) Phonics,
    - (3) Vocabulary development,
    - (4) Reading fluency, including oral reading skills, and
    - (5) Reading comprehension strategies;
  - b. Lack of appropriate instruction in math; or
  - c. Limited English proficiency.
5. SCS provides the parent with a copy of the documentation of the determination of eligibility at no cost. This documentation includes a statement of:

- a. Whether the child has a specific disability.
- b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.
- c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
- d. The educationally relevant medical findings, if any.
- e. SCS incorporates teaching strategies using scientific research-based procedures as an intervention to assist students with learning. Response to Intervention strategies are in place as interventions for any child behind their peers in school. Once the classroom teacher has identified those students who are struggling, a referral is made to the Title I teacher for services. The Title I teacher puts into place additional teaching strategies to assist the child. After a period of 9-weeks if the student shows little success, a referral is made to the Reading Specialist to incorporate additional learning strategies. If the child continues to struggle, a referral is made to special education. At Eligibility, the team considers the psychological report and all data related to student in determining eligibility. Data may include, but not be limited to:
  - a. Strategies tried by the general classroom teacher,
  - b. SOL Test Scores (less than 380 in reading and/or math),
  - c. PALS Test Scores (6 months or more below grade level),
  - d. STAR Test Scores (performing 2 grade levels below peers),
  - e. ASSESS Test Scores (has not shown a 15% gain in the previous year),
  - f. Sight Word List of High Frequency Words (less than 70% success),
  - g. Failed one-year or more in reading and/or math,
  - h. Functioning 2-years below peers in reading and/or math on diagnostic tests in A+ or River Deep, and
  - i. Other evaluations presented by the parent.
  - j. Assistance by the Title I teacher with little or no success.
    - (a) Dibbels Assessment
    - (b) Other assessment as determined by the Title I teacher
  - k. Assistance by the Reading Specialist with little or no success.
    - (a) CTOPP Assessment
    - (b) Woodcock Johnson Test of Achievement Level B

All assessment data collected will be presented to the parent.
- f. For identification of a child with a specific learning disability, whether consistent with the requirements of subdivisions T 2 a and T 2 b of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and
  - (1) The child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or
  - (2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards or intellectual development.



- g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T 2 c of this section.
  - 6. The eligibility group considers, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with § 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel. There shall be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents. SCS uses a variety of sources of evidence, including response to scientifically-based interventions, to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility. SCS, however, will not delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented.
  - 7. If the eligibility group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member will submit a written statement presenting that member's conclusions.
  - 8. SCS will obtain written parental consent for the initial eligibility determination. Thereafter, written parental consent will be secured for any change in categorical identification in the child's disability.
  - 9. The eligibility group will have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. The written summary will include any written statement from a member whose conclusion differs from the other members' determination. The summary statement may include other recommendations. The written summary will be maintained in the child's scholastic record.
  - 10. The written summary will be forwarded to the IEP team, including the parent, upon determination of eligibility. The summary statement may include other recommendations.
  - 11. With reevaluations, if the eligibility group determines that there is not a change to the child's eligibility for special education and related services, and educational needs, the IEP team is not required to convene, unless the parent requests that the IEP team meets.
- E. Nothing requires that children be identified by their disability on IEPs, SCS communications to parents regarding eligibility determinations, or other similar communications to parents. SCS will identify that each child has a disability and by reason of that disability needs special education and related services, and is regarded as a child with a disability.
- F. Eligibility as a Child with a Developmental Delay.
- 1. SCS includes developmental delay as one of the disability categories when determining whether a preschool child, ages two by September 1st through six, inclusive, is eligible for special education and related

services. SCS includes developmental delay as one of the disability categories when determining whether a school-aged child, 2 through 6, inclusive, is eligible under this chapter. A 35% delay in two or more areas or a 40% delay in one area with documentation that one of the skill areas is also being affected qualifies a child as developmentally delayed in SCS. These skill areas include: social and emotional, fine and gross motor, visual perception, reasoning, and receptive and expressive language. Other disability categories may be used if appropriate for the child.

**G. Eligibility Determination for Specific Learning Disability**

A child may be determined eligible for special education and related services as a child with a specific learning disability if:

1. The child does not achieve adequately for the child's age or meet VDOE approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or VDOE-approved grade level standards.
  - a. Oral expression
  - b. Listening comprehension
  - c. Written expression
  - d. Basic reading skills
  - e. Reading comprehension
  - f. Reading Fluency
  - g. Mathematical calculations
  - h. Mathematical problem solving
2. For a child suspected of having a specific learning disability, the documentation of the eligibility determination contains a statement of:
  - a. Whether the child does not make sufficient progress to meet age or VDOE-approved grade-level standards in one or more of the above eight areas when using a process based on the child's response to intervention; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards, or intellectual development that is determined by the eligibility group to be relevant to the identification of a specific learning disability, using appropriate assessments.
  - b. The determination of the eligibility group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage ; or limited English proficiency on the child's achievement level; and
  - c. If the child has participated in a process that assesses the child's response to scientific, research-based intervention,
    - (1) the instructional strategies used and the child-centered data collected; and
    - (2) the documentation that the child's parents were notified about Virginia's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

3. The group may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:
  - a. A visual, hearing, or motor disability;
  - b. Mental retardation;
  - c. Emotional disturbance; or
  - d. Environmental, cultural, or economic disadvantage; or
  - e. Limited English proficiency on the child's achievement level; or
  - f. Lack of appropriate instruction in reading; or
  - g. Lack of appropriate instruction in math.
4. SCS ensures the following additional procedures regarding the eligibility determination for those students who have questionable scores when using the 20 pt. discrepancy model or who are borderline and additional data is needed:
  - a. A child must not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in reading, including in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension strategies), a lack of instruction in math, or due to limited English proficiency.
5. SCS incorporates teaching strategies using scientific research-based procedures as an intervention to assist students with learning. Response to Intervention strategies are in place as interventions for any child behind their peers in school. Once the classroom teacher has identified those students who are struggling, a referral is made to the Title I teacher for services. The Title I teacher puts into place additional teaching strategies to assist the child. After a period of 9-weeks if the student shows little success, a referral is made to the Reading Specialist to incorporate additional learning strategies. If the child continues to struggle, a referral is made to special education. At Eligibility, the team considers the psychological report and all data related to student in determining eligibility. Data may include, but not be limited to:
  - a. Strategies tried by the general classroom teacher,
  - b. SOL Test Scores (less than 380 in reading and/or math),
  - c. PALS Test Scores (6 months or more below grade level),
  - d. STAR Test Scores (performing 2 grade levels below peers),
  - e. ASSESS Test Scores (has not shown a 15% gain in the previous year),
  - f. Sight Word List of High Frequency Words (less than 70% success),
  - g. Failed one-year or more in reading and/or math,
  - h. Functioning 2-years below peers in reading and/or math on diagnostic tests in A+ or River Deep, and
  - i. Other evaluations presented by the parent.
  - j. Assistance by the Title I teacher with little or no success.
  - k. Assistance by the Reading Specialist with little or no success.
6. Strategies may not be a hindrance for referral to special education, and the parent must be informed of all intervention strategies employed as part of eligibility. A copy of all data pertaining to interventions that is reviewed at the time of Eligibility is given to the parent.

- I. **Child Found Not Eligible** - Information relevant to instruction for a child found not eligible for special education must be provided to the child's teachers or any appropriate committee. Parental consent to release information must be secured for children in private schools, as necessary.
- J. **IEP Timeline** - If the determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child within *30 calendar days* from eligibility.
- K. **Child's Status---Previous Enrollment in Special Education**
  - 1. If a child with a disability has been receiving special education from one local educational agency in Virginia and transfers to SCS, we are responsible for ensuring that the child has available special education and related services in conformity with the existing IEP.
    - a. SCS must adopt and implement the existing IEP of the former local educational agency with consent of the parent or parents or develop a new IEP for the child, or adopt and implement the existing IEP with identified modifications with consent of the parent or parents, or develop a new IEP for the child. Interim services agreed to by both the parent or parents and SCS may be implemented until a new IEP is developed and in place.
    - b. If the parent or parents and SCS are unable to agree on interim services, SCS must implement the existing IEP until a new IEP is developed and implemented.
  - 2. When a child with a disability under IDEA transfers to SCS from another state, SCS must decide whether to adopt the most recent evaluation and IEP developed for the child by the local educational agency in the previous state. SCS must determine, as an initial matter, whether the child has a disability and whether the most recent evaluation of the child conducted by the local education agency (LEA) in the previous state and the IEP developed by that LEA meet the requirements of IDEA and this chapter. This applies to transfers "in the same school year."
    - e. If SCS accepts the determination made by the LEA that the child has a disability in the previous state and adopts that LEA's evaluation, SCS' must provide notice to the child's parent(s).
    - f. If SCS determines that the IEP developed by the school division in the previous state meets the requirements of IDEA. SCS must:
      - (3) Serve the child consistent with the IEP if a copy of the IEP is available, if the parent or parent's consent to the implementation of the IEP, and if the local educational agency believes the IEP is appropriate for the child; or
      - (4) Conduct an IEP meeting without undue delay if the parent or parents and SCS are not satisfied with the IEP developed for the child in the previous state or a revision to the IEP is indicated for other reasons, in no case later than *30 calendar days* after the date SCS determined that it would accept the evaluation and eligibility

- determination from the previous state. The most recent IEP must be implemented until the new IEP is developed and agreed upon.
- g. If SCS does not adopt the previous state's evaluation of the transferring child or does not receive a copy of the evaluation, SCS must provide proper notice, initiate evaluation procedures, and conduct the evaluation in accordance with this chapter. When a child transfers from another state to SCS, a determination for a test must be made. If SCS determines that an evaluation is necessary, the evaluation is not considered a reevaluation, but is an initial evaluation.
    - (3) During the evaluation, the child must receive services in accordance with the existing IEP excluding the sections of the IEP that are not in accordance with this chapter. The local educational agency must inform the parent or parents of the sections of the existing IEP that are not in accordance with this chapter.
    - (4) Once the evaluation is completed and eligibility has been determined, an IEP meeting must be held without undue delay, but no later than **30 calendar days** after the date the child is determined to be eligible, to develop an appropriate IEP for the child.
  - h. If the child's parent or parents disagree with SCS evaluation or proposed IEP, they may initiate a due process hearing. During the pendency of the hearing, the child may be placed in the program developed by the IEP group with consent of the parent or parents or in another placement agreeable to the parent or parents and SCS. If the parent or parents do not agree to place the child in the program proposed by the IEP group and no other interim placement can be agreed upon, SCS is not required to implement the IEP developed by the school division in the previous state or to approximate the services in that IEP during the pendency of the due process proceedings.
3. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to SCS, SCS must review the current placement and adopt or revise and implement the IEP within **30 calendar days** of receipt of written notification of the child's transfer. The former Comprehensive Services Act Group receives written notification of the child's residence in the new locality from the former Comprehensive Services Act Group.

# TERMINATION OF SPECIAL EDUCATION AND RELATED SERVICES

## 8 VAC 20-81-90

Termination of one or more related services may be completed through an addendum to the IEP or through the IEP itself, during the annual review with proper documentation. The parent or parents must be notified of Change in Placement upon each termination of service.

### 8VAC 20-81-90. Termination of Special Education and Related Services

- A. Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.
  - 1. Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.
  - 2. The local educational agency shall evaluate a child with a disability in accordance with 8VAC20-81-70 before determining that the child is no longer a child with a disability under this chapter.
  - 3. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22. (34 CFR 300.305(e))
- B. The IEP team shall terminate the child's eligibility for a related service without determining that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team shall make this determination based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.
- C. Written parental consent shall be required prior to any partial or complete termination of services.
- D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C.
- E. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the eligibility procedures in 8VAC20-81-80 to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child. (34 CFR 300.9 and 34 CFR 300.305(e))
- F. Summary of academic achievement and functional performance. (34 CFR 300.305(e)(3))

1. For a child whose eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22, the local educational agency shall provide the child with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.
2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the local educational agency may provide the child with a summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the local educational agency shall provide the child with an updated summary when the child exits, or when the child's eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

#### **SCS Termination of Special Education and Related Services- Process and Procedures**

- A. **Scott County Schools Must Evaluate to Terminate Related Services-**
  1. Termination of one or more related services is a function of the IEP Committee and be accomplished through an addendum and Written Notice. An evaluation of a service may consist of: observations, affects on learning, formal or informal evaluations. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.
  2. A related service may be terminated during an IEP meeting without any determination that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team making the determination must include SCS' personnel representing the related service disciplines in person, by telephone, or by other similar electronic means. Parental consent must be secured prior to the termination of related services.
- B. **Termination of Special Education Services - The Eligibility Team must terminate the child's eligibility for special education and related services.**
  1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services and if parental consent is secured. Eligibility and Written Notice serve as documentation that a student no longer needs special education services.
  2. It is SCS' policy that prior to a child's graduation with an advanced or standard diploma, or exceeding the age of eligibility, the student will receive a "summary of the child's academic achievement and functional

performance,” including recommendations on how to assist the child in meeting his/her postsecondary goals.

Procedures are as follows:

- Children must complete an exit interview with either the guidance counselor or special education teacher. For some children this process may be accomplished by the end of the 11<sup>th</sup> grade year.
  - The type of diploma, academic achievement and functional abilities must be reviewed.
  - Any accommodations and/or modifications that the child may need to be successful postsecondary must be documented.
  - If the child’s interest requires agency involvement, college referral, technical school referral, or transition into the work force the exit interview must reflect the appropriate referral.
  - The exit interview does not require a formal IEP meeting.
3. If the parent revokes consent for continuing special education and related services, SCS may not require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education and related services.
- a. The revocation consent rule applies to revocation for all special education and related services. Disagreements with a provision of a particular service would still be addressed by the IEP team. Mediation and due process are available options to resolve disputes regarding particular services.
  - b. If a parent revokes consent for continuing special education and related services for his/her child, the SCS is not determining that the child is no longer a child with a disability. Instead, the SCS is discontinuing the provision of special education and related services pursuant to the decision of the parent and there is no obligation for SCS to evaluate the child.
  - c. If a parent revokes consent and later requests that his/her child be evaluated for special education and related services, the SCS must treat this as a request for an initial evaluation, rather than re-evaluation.
  - d. Children who have been previously IDEA-eligible should not be treated any differently for child find purposes. A parent, however, may refuse to provide consent for an initial evaluation.
4. After revocation of consent goes into effect:
- a. the student is treated the same as any other non-disabled student, along with access to accommodations, if any, that are available to non-disabled students
  - b. the student’s IEP is no longer in effect. The LEA is not required to provide FAPE, conduct a triennial re-evaluation, or hold annual IEP meetings.
  - c. regular discipline rules apply. Unless intervening facts show otherwise, the SCS would not be considered to “have knowledge” of the student’s disability and is not required to conduct a manifestation review.



## FREE APPROPRIATE PUBLIC EDUCATION 8 VAC 20-81-100

### 8 VAC 20-81-100. Free Appropriate Public Education

#### A. Age of Eligibility

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the definition of "age of eligibility" as outlined in 8VAC20-81-10 and who reside within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they are advancing from grade to grade or who have been suspended or expelled from school in accordance with the provisions of 8 VAC 20-81-160. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101 and 34 CFR 300.109)
  - a. The services provided to the child under this chapter must address all of the child's identified special education and related services needs.
  - b. The services and placement needed by each child with a disability to receive a free appropriate public education must be based on the child's unique needs and not on the child's disability.
2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to: (34 CFR 300.102(a))
  - a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to age-eligible students who have graduated but have not been awarded a standard or advanced studies high school diploma, or to those students who have been awarded a general educational development (GED) credential.
  - b. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.
  - c. Children with disabilities who are eligible under IDEA Part B, Subpart H, but who receive early intervention services under IDEA Part C.

#### B. A free appropriate public education shall be available to children with disabilities who reside within a school division but do not hold a valid U.S. citizenship or a student visa.

- C. Program options. Each local school division shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (34 CFR 300.110)
- D. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, shall be at no cost to the parents of the child. (34 CFR 300.104)
- E. Assistive technology devices. (34 CFR 300.34(b) and 34 CFR 300.113)
1. Each local educational agency shall ensure that the following are functioning properly, including completing routine checks:
    - a. Hearing aids worn in school by children with hearing impairments, including deafness; and
    - b. The external components of surgically implanted devices.
  2. A local educational agency is not responsible for the postsurgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).
- F. Availability of assistive technology. (34 CFR 300.105)
1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 8VAC20-81-10, are made available to a child with a disability if required as part of the child's:
    - a. Special education;
    - b. Related services; or
    - c. Supplementary aids and services.
  2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.
  3. Local educational agencies are not required to provide personal devices, including eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.
- G. Transportation. (§§ 22.1-221 and 22.1-347 of the Code of Virginia; 34 CFR 300.107)
1. Each child with a disability, aged two to 21, inclusive, placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the

same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications shall be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.
3. A local educational agency shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.
4. If a local educational agency enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent(s).
5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at Staunton, the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

**H. Nonacademic and extracurricular services and activities. (34 CFR 300.107 and 34 CFR 300.117)**

1. Each local educational agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (See also 8VAC20-81-130 A 2)
2. Nonacademic and extracurricular services and activities may include but not be limited to 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.

**I. Physical education. (34 CFR 300.108)**

1. General. Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a free appropriate public education, unless the local educational agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.

2. Regular physical education. Each child with a disability shall be afforded the opportunity participate in the regular physical education program available to children without disabilities, unless:
  - a. The child is enrolled full time in a separate facility; or
  - b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.
3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the local educational agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.
4. Education in separate facilities. The local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with this subsection.

**J. Extended school year services. (34 CFR 300.106)**

1. Each local educational agency shall ensure that extended school year services, including transportation to and from such services, are available as necessary to provide a free appropriate public education consistent with subdivision 2 of this subsection.
2. Extended school year services shall be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.
3. In implementing the requirements of this section, a local educational agency may not:
  - a. Limit extended school year services to particular categories of disability;
  - b. Unilaterally limit the type, amount, or duration of those services; or
  - c. Limit the provision of extended school year services to only the summer.

**K. Children with disabilities in public charter schools. (34 CFR 300.209)**

1. Children with disabilities who attend charter schools shall be served by the local school division in the same manner as children with disabilities in its other schools, including the provision of supplementary and related services on site at the charter school to the same extent to which the local educational agency provides such services on the site to its other public schools.
2. The local school division shall ensure that all requirements of this chapter are met.

**L. Length of school day. School-aged students with disabilities shall be provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise. For preschool-aged children with disabilities, the IEP team determines the length of the school day.**

**M. Methods and payments. (34 CFR 300.103)**

- 1. The Virginia Department of Education may use whatever state, local, federal, and private sources of support that are available to meet the requirements of this part.**
- 2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.**
- 3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.**

**N. Disability harassment. Each local educational agency shall have in effect policies that prohibit harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)**

**SCS Free Appropriate Public Education - Process and Procedures**

- A. Exceptions. It is Scott County's goal to provide a full educational opportunity for all children with disabilities in the least restrictive setting from birth to 21, inclusive, residing within our jurisdiction. In order to ensure a free appropriate public education, SCS provides a continuum of alternative placements to meet the needs of all children with disabilities between the ages of two and 21, inclusive. All placement decisions are based on the child's unique needs and not on the child's disability; therefore, no categorical placement of children with disabilities occurs. All placement options are considered and children with disabilities are served in a program with age appropriate peers, except when it is shown that for a particular disabled child an alternative placement is more appropriate.**
- a. A child with a disability's FAPE entitlement is not terminated by the child's receipt of an alternative degree that is not fully aligned with Virginia's academic standards. For example, an age eligible child may continue to be entitled to FAPE as a child with a disability, even if the child has received a general educational development credential (GED), a Modified Standard Diploma, or Special Diploma. 300.102(a)(3)(iv)**
  - b. Children with disabilities, aged 18 to 21, inclusive, who if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.**
  - c. A child with a disability is not entitled to the FAPE who is eligible to receive special education and related services in accordance with**

Section 619 of Part B of IDEA '04, but who instead receives early intervention services under Part C of IDEA.

- B. Program Options.** SCS ensures that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities, which may include but not be limited to:

1. Developmental Art
2. Band
3. Music
4. Industrial arts
5. Consumer and Homemaking Education
6. Career Education
7. Horticulture
8. Foods
9. Auto Body
10. Auto Shop
11. Prevocational Skills Training
12. Cosmetology

- C. Residential Placement.** If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care, room and board, must be at no cost to the parents of the child. SCS works with Social Service's FAPT and CPMT teams to meet the needs of these students. If evaluations are necessary, SCS contracts with the residential facilities to provide needed assessments.

- D. Proper Function of Hearing Aids.** SCS ensures that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

1. SCS must ensure that the external components or surgically implanted medical devices are functioning properly. SCS has a part-time audiologist who makes this determination.
2. For a child using a device and receiving special education and related services, SCS "is not responsible for the post-surgical maintenance, programming or replacement of the medical device.

- E. Assistive Technology.**

1. SCS ensures that assistive technology devices or assistive technology services, are made available to a child with a disability if required as part of the child's:
  - a. Special education
  - b. Related services, or
  - c. Supplementary aids and services.
2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the

child's IEP Team determines that the child needs access to those devices in order to receive a free appropriate public education.

**F. Transportation**

1. Each child with a disability placed in an education program, including private special education day or residential placements, by SCS is entitled to transportation to and from school, class, or program at not cost if such transportation is necessary to enable the child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities must share the same transportation unless a child's IEP requires specialized transportation.
2. If the IEP Team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications must be provided in the least restrictive environment. Transportation personnel may be on the IEP Team or be consulted before any modifications or accommodations are written into the child's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.
3. This includes children placed in other school divisions by SCS for the provision of special education or related services for a child with a disability. The child must be transported to and from the program at no cost to the parent or parents.
4. If a child with a disability is placed in the Virginia School for the Deaf and the Blind in Staunton or the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton, the Virginia school must be responsible for the provision of transportation services. When such children are educated as day children, SCS must be responsible for the provision of transportation services to and from school.

**G. Nonacademic and Extracurricular Services and Activities**

1. SCS ensures that a child with a disability is entitled to the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participating in those services and activities.
2. Nonacademic and extracurricular services and activities may include but not be limited to: Counseling services, Athletics, Transportation, Health Services, Recreational activities, Special interests teams or clubs sponsored by SCS, Referrals to agencies that provide assistance to individuals with disabilities, Employment of children, including both employment by SCS and assistance in making outside employment available.

**H. Physical Education**

1. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education.

2. **Regular Physical Education.** A child with a disability's FAPE entitlement includes the provision of physical education (PE) services, specially designed if necessary, unless SCS enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade as the child with a disability. However, if PE is required by the child's IEP, those services are provided in accordance with the child's IEP. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:
  - a. The child is enrolled full-time in a separate facility; or
  - b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.
3. **Special Physical Education.** SCS is responsible for any specially designed physical education, as prescribed in the child's IEP, or responsible for making arrangements for those services to be provided through other public or private programs.
4. **Education in Separate Facilities.** SCS is responsible for the education of a child with a disability who is enrolled in a separate facility and ensures that the child receives appropriate physical education services in compliance with subdivisions 1 and 3 of this subsection.

**I. Extended School Year Services (ESY)**

1. Extended school year services must be provided only if a child's IEP Team determines on an individual basis that the services are necessary for the provision of a free appropriate public education to the child.
2. ESY services are not limited to summer school. ESY services are made available according to each child's needs, which may include: before school, after school, extra-curricula activities, summer school, etc.
3. SCS does not:
  - a. Limit extended school year services to particular categories of disability, or
  - b. Unilaterally limit the type, amount, or duration of those services.

**J. Children with Disabilities in Public Charter Schools.**

1. Children with disabilities who attend charter schools must be served by SCS in the same manner as children with disabilities in its other schools.
2. SCS must ensure that all requirements of this chapter are met.

**K. Length of School Day.** School-aged children with disabilities must be provided a school day comparable in length to the day provided to school-aged children without disabilities unless their IEP specifies otherwise. A normal school day in Scott County Public Schools is 6 hours.

**L. Harassment.** Scott County Public Schools (SCS) prohibits the harassment of children with disabilities in academic and nonacademic settings during the school day and for school-sponsored extracurricular activities. SCS's student handbook outlines various types of harassment that students might



experience in school and how to file a complaint within the school system. Complaints may be taken either verbally or in writing. Forms are provided upon request at any school or from the Central Office. The procedures for filing a complaint and investigative process are outlined as well in the student handbook which is updated and published each year. Parents and students are required to sign the student handbook so that SCS has documentation that each parent and student were informed of their rights. The Director of Special Education for SCS has been designated as the 504 Compliance Officer. The Compliance Officer is housed at the Scott County School Board Office or central office. SCS's has a no tolerance harassment policy for any student attending Scott County Public Schools.

### **SCS Participation in Assessment**

SCS ensures that children with disabilities are included in state and district-wide test programs, with appropriate accommodations, where necessary. If a child is unable to participate in State or district-wide tests, the State or SCS must allow children with disabilities to participate in an alternate test. Tests may include:

- A. **Standards of Learning Tests (SOL)**. The purpose of the SOL tests is to measure the achievement of children on the SOL, adopted by the State Board of Education in the areas of English, mathematics, history/social science, and science at grades 3,4,5,6,7, and 8; and through end-of-course tests in specific high school courses. The importance of children with disabilities participating in the SOL tests is reinforced by the fact that children desiring a standard or advanced studies diploma must need to earn a prescribed number of credits as well as specified units of verified credit "based on a minimum of 140 clock hours of instruction and the achievement by the child of a passing score on the end-of-course SOL test for that course." For each child with a disability identified under IDEA, the IEP Team must take into consideration and be responsible for the following:
  - B. **Role of IEP Team**
    1. Ensure that each child's parent or parents are given the opportunity to actively participate in the IEP Team and its decisions in the testing process.
    2. Determine whether each individual child is to be a participant or to be exempted from the testing process
      - a. Children with disabilities working toward a Standard or Advanced Studies Diploma must participate in and pass the end-of-course SOL tests and earn 27 credits in specific courses with 9 verified credits for the Advanced Diploma and earn 25 credits in specific courses with 6 verified credits.
      - b. Children with disabilities working toward a Modified Standard Diploma must pass the 8<sup>th</sup> grade reading and math SOL tests and earn 20 credits in specific courses.
      - c. Children working toward an IEP diploma have the option of taking the SOL tests. However, if the child opts out of the test, SCS must receive a "0" for that child to be averaged in with the respective school's

scores. Children working toward and IEP Diploma must meet the requirements of the IEP, and are encouraged to work toward a minimum of 21 credits and have a vocational completer prior to graduation.

- d. Child may move up and down the ladder of selection for a diploma at any time. However the child and his/her parent or parents must understand that the child may be expected to take additional courses or participate in more SOL tests as they change their minds and move up the ladder.
3. Ensure that each child's parent or parents understand the ramifications of the IEP Team's decisions and that the parent's or parents' due process rights have been explained
4. Review the IEP Team's decision to exempt the child from one or more of the SOL tests on an annual basis

**C. The IEP Must Specify in Regards to Testing**

For all students with disabilities identified under IDEA, the IEP Team determines how the student will participate in the accountability system. For students identified under Section 504, the 504 Committee determines how the student will participate. A student's IEP must specify the student's participation in the state accountability system as follows:

- participation in the SOL test with no accommodations ;
- participation in the SOL test with accommodations; or
- participation in VAAP.

If the IEP Team determines that the student will participate in the VAAP instead of taking SOL tests with or without accommodations, a statement that addresses each of the following must be included in the IEP:

- why the student cannot participate in the regular assessment;
- why the VAAP is appropriate for the student, including how the child meets the criteria for the alternate assessment; and
- how the child's participation in the VAAP will impact the child's promotion and/or graduation.

A student's 504 Plan must specify the student's participation in the state accountability system as follows:

- participation in the SOL test with no accommodations;
- participation in the SOL test with accommodations;
- participation in VMAST for credit accommodations (The VMAST EOC English Reading assessment will no longer be available after the 2018-2019 school year.)

The IEP must specify:

1. Child participation
2. The parent or parents signature must be evidenced if the decision is to opt the child from one or more parts of the SOL tests
3. There must be an explanation for the exemption

4. There must be a statement addressing how the child must be evaluated if exempted from one or more parts of the SOL.
5. Accommodation must be identified if necessary (should only be those the child generally needs and uses throughout the year and not just for this particular test)

**D. The IEP Team Needs to Take Into Consideration: Timing/scheduling, Setting, Presentation, Response**

**E. VA Alternate Assessments**

The VAAP is an alternate assessment based on alternate achievement standards and is specifically designed to evaluate the achievement of students with significant cognitive disabilities. The VAAP is available to students in grades 3-8 and high school who are working on academic standards that have been reduced in complexity and depth. These academic standards are called Aligned Standards of Learning (ASOL) and are available in reading, writing, mathematics, science, and history/social science. Only students with significant cognitive disabilities who are eligible under IDEA and who meet the VAAP guidelines for participation may be assessed through the VAAP. Students with disabilities served by 504 Plans are not eligible for VAAP. Students will compile a collection of work samples, or COE to demonstrate achievement on the ASOL. Students who participate in the VAAP participate in all content areas; participation decisions are made on an individual basis.

1. Virginia Alternate Test Program (VAAP). When it is determined that the child cannot participate in the SOL test even with accommodations, the IEP Team must consider the state alternate test (VAAP). Benchmarks and short term objectives are required for all children.
  - a. Required Criteria
    - (1) The child has a current IEP;
    - (2) The child may exhibit communication difficulties;
    - (3) The child exhibits uneven learning conditions;
    - (4) The child may have motor impairments;
    - (5) The child demonstrates significant cognitive impairments and adaptive skill deficits;
    - (6) The child demonstrates difficulty learning new tasks and maintaining skills;
    - (7) The child requires individualized methods of accessing information;
    - (8) The child's present level of performance indicates the need for extensive direct instruction and/or intervention in a life skill curriculum to accomplish the application and transfer of life skills;
    - (9) The child requires intensive, frequent and individualized instruction in a variety of settings to show progress and acquire, maintain and be able to apply life or functional academic skills;
    - (10) The child in 8<sup>th</sup> grade through high school is working toward educational goals other than those prescribed for a modified standard, standard, or advanced studies diploma.

- a. If the VAAP is determined to be an appropriate measure of child performance, the IEP Team must write a statement of why the program is appropriate.
  - b. Children with disabilities must take one or more of the SOL tests or participate in the VAAP.
3. **Required Criteria**  
 Eligibility for the VAAP is considered on a test-by-test basis. If a student is eligible for the VAAP, he or she will participate in VAAP for all content areas. Students participating in the VAAP must be enrolled in grades 3-8 or high school. Students in grades 3-8 are required to submit a Collection of Evidence (COE) for all content areas assessed at their grade level. Students in high school are required to submit a COE including the content areas of reading, writing, mathematics, science, and history/social science by the end of their grade 11 school year.
- a. The child has a current IEP or 504 Plan
  - b. The child is enrolled in a course that has a Standards of Learning end-of-course test and/or the child is pursuing a Modified Standard Diploma and seeking certification for having met the literacy and/or numeracy requirements.
  - c. The impact of the child's disability demonstrates to the IEP team or 504 committee that the child must not be able to access the Standards of Learning tests even with standard or nonstandard testing accommodations and therefore requires a substitute evaluation. The IEP team/504 committee members need to be sure that all possible standard and nonstandard accommodations have been examined within the child's program in order to provide access to content and test within the specific Standards of Learning course.
4. Virginia Modified Achievement Standards Test (VMAST) is only available to students with disabilities seeking a standard diploma with credit accommodations. Beginning with the fall 2018 test administration, VMAST Algebra I (2009 SOL) is no longer available. The VMAST End-of-Course (EOC) English Reading assessment will no longer be available after the 2018-2019 school year

### **Diplomas for Students with Disabilities**

#### **A. Advanced Studies Diploma**

For students entering the ninth grade for the first time in 2018-2019 and beyond  
 To graduate with an Advanced Studies Diploma for students entering the ninth grade for the first time in 2018-2019 and beyond, a student must earn at least 27 standard units of credit and five verified units of credit. Students earn standard credits by successfully completing required and elective courses. Students earn verified credits by successfully completing required courses and passing associated end-of-course SOL tests or other assessments approved by the state Board of Education.

#### **B. Standard Diploma**

For students entering the ninth grade for the first time in 2018-2019 and beyond

To graduate with a Standard Diploma for students entering the ninth grade for the first time in 2018-2019 and beyond, a student must earn at least 25 standard units of credit and five verified units of credit. Students earn standard credits by successfully completing required and elective courses. Students earn verified credits by successfully completing required courses and passing associated end-of-course SOL tests or other assessments approved by the state Board of Education

### **C. Applied Studies Diploma**

An Applied Studies Diploma will be awarded to each disabled student who successfully completes the requirements set forth in his/her IEP, but does not meet the requirements for other diplomas. The IEP Team must take into consideration transition requirements as set forth in the regulations for all students with disabilities prior to graduation. Consideration must be given to the direction that each student and their parents have chosen, whether academic or vocational. Students pursuing a vocational track should either have a vocational completer or work experience depending on the type of special education program identified in the IEP, taking into consideration the student's ability level. Students are encouraged to obtain a minimum of 21 credits and a completer at the Scott County Career and Technical School.

The school board will notify the parent of students with disabilities who have an IEP and who fail to meet the requirements for graduation of the student's right to a free and appropriate education to age 21, inclusive, pursuant to Va. Code § 22.1-213 et seq.

### **D. Certificates of Program Completion**

A Certificate of Program Completion will be awarded to any student who completes a prescribed program of studies defined by the local school board but who is not eligible to receive a standard, advanced studies, modified standard, special, or general achievement diploma.

The school board will notify the parent of students who fail to graduate or who fail to achieve the number of verified units of credit required for graduation as provided in the Standards for Accreditation and who have not reached 20 years of age on or before August 1st of the school year of the right to a free public education. If the student who does not graduate or achieve such verified units of credit is a student for whom English is a second language, the school board will notify the parent of the student's opportunity for a free public education in accordance with Va. Code § 22.1-5.

## **Standard Diploma Credit Accommodations for Students with Disabilities**

### **Student Eligibility Criteria**

Credit accommodations for the Standard Diploma shall be determined by the student's Individualized Education Program (IEP) Team or 504 Plan Committee, including the student where appropriate, at any point after the student's eighth grade year. The school must secure the informed written consent of the parent/guardian and the student, as appropriate, to choose credit accommodations after review of the student's academic history and full disclosure of the student's options.

The student must meet the following criteria to be eligible to receive credit accommodations for the Standard Diploma:

- a. Student must have a current IEP or 504 Plan with standards-based content goals;
- b. Student has a disability that precludes him or her from achieving and progressing commensurate with grade level expectations, but is learning on-grade-level content;
- c. Student needs significant instructional supports to access grade level SOL content and to show progress; and
- d. Based on multiple objective measures of past performance, student might not be expected to achieve the required standard and verified units of credit within the standard time frame.

### **Assessments Used to Verify Credits**

- a. Additional substitute tests may be identified and approved to earn a verified credit. The Board of Education may from time to time approve additional tests that are recommended by the Superintendent of Public Instruction for the purpose of awarding verified credit. The Virginia Department of Education may partner with a local school division in the procedure to nominate an additional test. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:
  - i. The test must be standardized and graded independently of the school or school division in which the test is given;
  - ii. The test must be knowledge based;
  - iii. The test must be administered on a multistate or international basis, or administered as part of another state's accountability assessment program; and
  - iv. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the Standards of Learning (SOL) content in the course for which verified credit is given.
- b. Permit the continued use of the Virginia Modified Achievement Standards Test (VMAST) for verified credit purposes for Algebra I and end-of-course (EOC) reading. To take the VMAST for verified credit purposes, a student must meet all current VMAST eligibility requirements and beginning in the 2014-2015 school year, the student must also meet the following additional criteria:
  - i. pass the high school course; and
  - ii. score 374 or below on the end-of-course Standards of Learning test after taking the test at least twice.

### **Expanded Use of Locally Awarded Verified Credit (LAVC)**

Students with disabilities who are eligible for credit accommodations shall not be subject to the limit on the number of locally awarded verified credits. The following procedures apply:

- a. Students with disabilities who entered the ninth grade for the first time prior to 2018-2019 that require more than three LAVC in any subject must have the

- eligibility criteria for credit accommodations properly documented in the IEP or 504 Plan.
- b. Students with disabilities entering the ninth grade for the first time in 2018-2019 and beyond that require more than one LAVC must have the eligibility criteria for credit accommodations properly documented in the IEP or 504 Plan.

### **Expanded Score Range for Expedited Retakes of Standards of Learning Tests**

Students with a scaled score between 350-374 are eligible for an expedited retake of end-of-course Standards of Learning tests with the exception of the English Writing Standards of Learning tests. Eligible students must:

- a. Have passed the course associated with the test; (or is passing the course at the time of test); and
- b. Have one of the following:
  - i. Failed the test by a narrow margin (“narrow margin” criteria shall be defined as a scaled score of 350-374); or
  - ii. Failed the test by any margin and have extenuating circumstances that would warrant retesting; or
  - iii. Did not sit for the regularly scheduled test for legitimate reasons.

### **Course Offerings**

Additional course options available only to students with disabilities to meet the standard credit requirements for the Standard Diploma:

- a. Augment the Personal Finance course (3120) to include the 21 Work Readiness Skills (WRS) for the Commonwealth. Allow this augmented course to meet the Economics and Personal Finance requirement *if* the student has earned at least three standard credits in history and social science. The economics strand in these courses would be deemed a credit accommodation. Upon completion of the augmented Personal Finance course, the student may take the WRS assessment to earn the Board-approved Work Readiness Skills credential. This approach would satisfy the graduation requirements for economics and personal finance, history and social sciences, and the workplace credential.
- b. Establish minimum content courses in the subject areas required for verified credits and provide flexibility in how the courses are delivered. Allow parts I and II of certain required courses to each earn a standard credit towards the total number required in the subject area. The student must successfully complete:
  - i. Four standard credits in English and one verified credit each in Reading and Writing
  - ii. Three standard credits in mathematics that include Algebra I and Geometry, and one verified credit in mathematics

- iii. Three standard credits in science that include Earth Science and Biology, and one verified credit in science
- iv. Three standard credits in history and social science that include Virginia and U.S. History and Virginia and U.S. Government, and one verified credit in history and social science
- v. Two standard credits for one sequence in a content area, examples are: Algebra I Part 1 and Algebra I Part 2 with a credit for each part.

### **Special Permission Credit Accommodations**

This accommodation requires submission of documentation to VDOE.

Scott County Public Schools may award locally awarded verified credits in reading, writing, mathematics, science and history, to certain students with disabilities. Eligible students must:

- a. pass the high school course based on a non-modified curriculum;
- b. score below 375 on the SOL test;
- c. have a documented disability that presents a unique or significant challenge to the degree that the student is unable to demonstrate knowledge of the course content on the SOL test using available accommodations; and
- d. demonstrate achievement in the academic content through an appeal process administered at the local level.

The decision to consider a special permission credit accommodation will be made through the IEP and/or 504 review process. School divisions must submit a Special Permission Locally Awarded Verified Credit Accommodation form to the VDOE for each student being considered for a locally awarded verified credit with a SOL scaled score below 375. Documentation regarding the disability that prevents the student from fully demonstrating his/her knowledge of the course content on the SOL test even with accommodations must be included on the form. This documentation should include evidence of the use or consideration of other credit accommodations and other substitute assessment options. The VDOE staff will review the submitted documentation and will return the results of the review to the school division representative.

### **Locally Awarded Verified Credit Appeal Process**

If for any reason offered accommodation(s) are rejected by a student and/or parent, the designated case manager (special education case manager or 504 case manager) should be contacted to call an IEP or 504 meeting. If the parent is still not satisfied with the decision regarding a Locally Awarded Verified Credit Accommodation, he or she may appeal the decision and may request a meeting for Mediation regarding the accommodation(s) requested. Parental Rights will be given to the adult student/parent.



A meeting (IDEA or 504) is called within 10 days from the time the adult student/parent makes known their concerns. If the issue cannot be resolved at the IEP or 504 meeting, the parent may request mediation or go to due process. The parent/student should be able to discuss their concerns and/or present new information for the team to consider at the meeting. Refer to Complaint Resolution Procedures of this manual.

### **Additional Credit Accommodations**

The Board may, from time to time approve additional credit accommodations.

### **Free or Low Cost Legal Aid**

At any time the parent and or parents feel the need for assistance pertaining to special education, the administrator of special education, the building principal, or the special education teacher must be available. Upon request, if the parent and/or parents feel the need of further assistance, the address and phone number of the Department for Rights of Virginians with Disabilities is provided or any other agency that the parent requests.

Virginia Department of Education  
Office of Special Education Dispute Resolution and Administration  
P.O. Box 2120  
Richmond, Virginia 23218  
1-804-225-2013  
FAX 1-804-786-8520

Virginia Office for Protection and Advocacy  
1910 Byrd Avenue  
Suite 5  
Richmond, Virginia 23230  
1-804-225-2042

Legal Aid (local clearing house) 1-276-201-2772  
Legal Aid, Charlottesville 1-434-977-0553  
emily@justice4all.com

## INDIVIDUALIZED EDUCATION PROGRAM (IEP) 8 VAC 20-81-110

### 8VAC 20-81-110 IEP Program

- A. Responsibility. The local educational agency ensures that an Individualized Education Program (IEP) is developed and implemented for each child with a disability served, including a child placed in a private special education school by:
1. A local school division, or
  2. A noneducational placement by a Comprehensive Services Act Team that includes the school division. SCS' responsibility is limited to special education and related services.
- B. Accountability
1. At the beginning of each school year, each local educational agency ensures that an IEP is in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue. (34CFR 300.323(a)) An IEP includes those components that are required by the federal and state special education regulations.
  2. Each local educational agency must ensure that an IEP: (34 CFR 300.323(c))
    - a. Is in effect before special education and related services are provided to an eligible child: and
    - b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;
    - c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and
    - d. Is implemented as soon as possible following parental consent to the IEP.
  3. Each local educational agency ensures that: (34 CFR 300.323(d))
    - a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
    - b. Teachers and providers are informed of:
      - (1) Their specific responsibilities related to implementing the child's IEP; and
      - (2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
  4. Each local educational agency is responsible for initiating and conducting meetings to develop, review and revise the IEP of a child with a disability.
  5. Each local educational agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether

the annual goals are being achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))

- a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
  - b. The results of any reevaluation conducted under this chapter;
  - c. Information about the child provided to or by the parent or parents;
  - d. The child's anticipated needs; or
  - e. Other matters.
6. Each local educational agency must provide special education and related services to a child with a disability in accordance with the child's IEP. (34 CFR 300.323 (c)(2))
  7. A parent or parents may ask for revisions of the child's IEP if the parent or parents feel that the efforts required are not being met.
  8. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))
  9. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))
    - a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes.
    - b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.
    - c. This meeting is not a substitute for the required annual IEP meeting.

#### **C. IEP Team**

1. General. Each local educational agency ensures that the IEP Team for each child with a disability includes: (34 CFR 300.321(a), (c) and (d))
  - a. The parent or parents of the child;
  - b. At least one regular education teacher of the child (if the child is or may be participating in the regular education environment)
  - c. At least one special education teacher of the child or, if appropriate, at least one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provided must be the speech-language pathologist.
  - d. A representative of each local educational agency who is:
    - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
    - (2) Knowledgeable about the general curriculum; and
    - (3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;
  - e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent or the child.

- f. At the discretion of the parent or parents, or local educational agency, other individuals who have knowledge of special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual must be made by the party (parent, parents, or local educational agency) who invited the individual to be a member of the IEP Team.
    - g. The child, if appropriate.
  - 2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.
  - 3. **Secondary Transition Service Participants (34 CFR 300.321(b))**
    - a. The local educational agency shall invite the child with disabilities to his/her IEP meeting if the purpose of the meeting must be the consideration of:
      - (1) The student's postsecondary goals;
      - (2) The needed transition services for the child (beginning by the child's 14<sup>th</sup> birthday); or
      - (3) Both.
    - b. If the student does not attend the IEP Meeting, the local educational agency must take other steps to ensure that the child's preferences and interests are considered.
    - c. To the extent appropriate and with the consent of the parent or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agencies in the planning of any transition services.
  - 4. **Part C transition participants.** In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's request, invite the Part C service coordinator or other representatives of the Part C system to the initial IEP meeting to assist with the smooth transition of services. (34 CFR 300.321(f))
- D. **IEP Team Attendance.** (34 CFR 300.321(e))
  - 1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
  - 2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:
    - a. The parent and the local educational agency consent in writing to the excusal; and

- b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

**E. Parent participation.**

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))
  - a. Notifying the parent of the meeting early enough to ensure that they will have an opportunity to attend; and
  - b. Scheduling the meeting at a mutually agreed on time and place.
2. Notice. (34 CFR 300.322(b))
  - a. General notice. The notice given to the parent:
    - (1) May be in writing, or given by telephone or in person with proper documentation;
    - (2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and
    - (3) Shall inform the parent of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child under subdivision C 1 f of this section.
  - b. Additional notice requirements are provided if transition services are under consideration.
    - (1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative of the Part C system under subdivision C 4 of this section.
    - (2) For secondary transition, the notice shall also:
      - (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
      - (b) Indicate that the local educational agency will invite the student; and
      - (c) Identify any other agency that will be invited to send a representative.
3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences. If the local educational agency uses an alternative means of meeting participation that results in additional costs, the local educational agency is responsible for those costs. (34 CFR 300.322(c))
4. A meeting may be conducted without a parent(s) in attendance if the local educational agency is unable to convince the parent(s) that they should attend. In this case, the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))
  - a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; or
  - c. Detailed records of visits made to the parent's(s') home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))
  6. At the IEP meeting, the IEP team shall provide the parent of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
  7. The local educational agency shall give the parent a copy of the child's IEP at no cost to the parent at the IEP meeting, or within a reasonable period of time after the IEP meeting not to exceed 10 calendar days. (34 CFR 300.322(f))
  8. If the local educational agency elects to use a draft version of an IEP in any IEP team meeting, such draft shall be developed and a copy shall be made available to the parent at least two business days in advance of the IEP meeting.
- F. Development, review, and revision of the IEP. (34 CFR 300.324(a))
1. In developing each child's IEP, the IEP team shall consider:
    - a. The strengths of the child;
    - b. The concerns of the parent for enhancing the education of their child;
    - c. The results of the initial or most recent evaluation of the child; and
    - d. The academic, developmental, and functional needs of the child.
  2. The IEP team also shall: (34 CFR 300.324(a))
    - a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;
    - b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
    - c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
    - d. Consider the communication needs of the child;
    - e. Consider the child's needs for benchmarks or short-term objectives;
    - f. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
    - g. Consider whether the child requires assistive technology devices and services.

3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))
4. The regular education teacher of a child with a disability, as a member of the IEP team, shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))
  - a. Appropriate positive behavioral interventions and supports and other strategies for the child; and
  - b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.
5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))
  - a. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or
  - b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.
6. The IEP team shall consider all factors identified under a free appropriate public education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall provide the parent with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81-170 C.

**G. Content of the individualized education program.** The IEP for each child with a disability shall include:

1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))
  - a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.
  - b. The present level of performance shall directly relate to the other components of the IEP.
2. A statement of measurable annual goals, including academic and functional goals designed to: (34 CFR 300.320(a)(2))
  - a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and
  - b. Meet each of the child's other educational needs that result from the child's disability.

3. If determined appropriate by the IEP team, as outlined in subdivision F 2 of this section, a description of benchmarks or short-term objectives. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives. (34CFR 300.320(a)(2))
4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (34 CFR 300.320(a)(4))
  - a. To advance appropriately toward attaining the annual goals;
  - b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.
5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section. (34 CFR 300.320(a)(5))
6. The following information concerning state and division-wide assessments shall be included: (34 CFR 300.320(a)(6))
  - a. A statement of any individual appropriate accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;
  - b. If the IEP team determines that the child must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment), a statement of:
    - (1) Why the child cannot participate in the regular assessment;
    - (2) Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment; and
    - (3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
  - c. A statement that the child shall participate in either a state assessment for all children that is part of the state assessment program or the state's alternate assessment;
  - d. A statement of any individual appropriate accommodations or modifications approved for use in the administration of division-wide assessments of student achievement that are needed in order for the child to participate in the assessment;
  - e. If the IEP team determines that the child must take an alternate assessment instead of a particular division-wide assessment of student achievement (or part of an assessment), a statement of:
    - (1) Why the child cannot participate in the regular assessment;



- (2) Why the particular alternate assessment selected is appropriate for the child; and
  - (3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
- 7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. (34 CFR 300.320(a)(7))
- 8. A statement of: (34 CFR 300.320(a)(3))
  - a. How the child's progress toward the annual goals will be measured; and
  - b. When periodic reports on the progress the child is making toward meeting the annual goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, and at least as often as parents are informed of the progress of their children without disabilities.
- 9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))
  - a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.
  - b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§ 1431 et seq.) including:
    - (1) A statement regarding natural environments, and
    - (2) A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
  - c. These components of the child's IFSP may be incorporated into the child's IEP.
- 10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))
  - a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include age-appropriate:
    - (1) Measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
    - (2) Transition services, including courses of study, needed to assist the child in reaching those goals. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.
  - b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements of subdivision 10 a of this subsection, the IEP shall also include a statement, if appropriate, of interagency responsibilities or any linkages.
  - c. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student and parent(s) have been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34CFR 300.320(c))

**H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))**

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

**I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))**

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.
2. All requirements regarding IEP development, review, and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard, or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.
3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:
  - a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.
  - b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.
  - c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

## **SCS IEP Process and Procedures**

- A. Responsibility – SCS ensures that an IEP is developed and implemented for each child with a disability served by SCS, including a child placed in a private special education school by: (34 CFR 300.112) For those students placed in private facilities, SCS stays in direct communication with representatives of the private facility.**
  - 1. Scott County Public Schools**
  - 2. A noneducational placement by a Comprehensive Services Act Team that includes the school division.**
- B. Accountability**
  - 1. At the beginning of each school year, SCS shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue. (34 CFR 300.323(a))**
  - 2. SCS shall ensure that an IEP: (34CFR 300.323(c))**
    - a. Is in effect before special education and related services are provided to an eligible child;**
    - b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;**
    - c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and**
    - d. Is implemented as soon as possible following parental consent to the IEP.**
    - e. The parent has the right to agree to approve part of the IEP.**
  - 3. SCS ensures that: (34 CFR300.323(d))**
    - a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and**
    - b. Teachers and providers are informed of:**
      - (1) Their specific responsibilities related to implementing the child's IEP; and**
      - (2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.**
  - 4. SCS is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.**

5. SCS ensures that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address: (34CFR 300.324(b))
    - a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
    - b. The results of any reevaluation conducted under this chapter;
    - c. Information about the child provided to or by the parent(s);
    - d. The child's anticipated needs; or
    - e. Other matters.
  6. SCS provides special education and related services to a child with a disability in accordance with the child's IEP. (34CFR 300.323 (c)(2))
  7. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.
  8. To the extent possible, SCS encourages the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))
  9. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent(s) and SCS may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))
    - a. If changes are made to the child's IEP, SCS shall ensure that the child's IEP team is informed of those changes.
    - b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.
    - c. This meeting is not a substitute for the required annual IEP meeting.
- C. IEP team.**
1. General. SCS ensures that the IEP team for each child with a disability includes: (34 CFR 300.321(a), (c) and (d))
    - a. The parent(s) of the child;
    - b. Not less than one regular education teacher of the child (if the child is or may be participating in the regular educational environment);
    - c. Not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist;
    - d. A representative of the local educational agency who is:
      - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
      - (2) Knowledgeable about the general education curriculum; and
      - (3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;
    - e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child;

- f. At the discretion of the parent(s) or local SCS, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or SCS) who invited the individual to be a member of the team; and
  - g. Whenever appropriate, the child.
- 2. SCS determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.
- 3. Secondary transition service participants. (34 CFR 300.321(b))
  - a. SCS encourages any student with a disability of any age to attend the student's IEP meeting; however, invites those students 14 years of age and older to attend with a formal letter if the purpose of the meeting will be the consideration of:
    - (1) The student's postsecondary goals;
    - (2) The needed transition services for the student; or
    - (3) Both.
  - b. If the student does not attend the IEP meeting, SCS shall take other steps to ensure that the student's preferences and interests are considered. SCS typically includes a student Interest Survey, informal and formal transition assessments to review.
  - c. To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, SCS shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, SCS shall take other steps to obtain the participation of the other agency in the planning of any transition services. Transition meetings are held at the end of the student's 11<sup>th</sup> grade year. If the student misses the 11<sup>th</sup> grade transition with agencies, then they may participate during their 12<sup>th</sup> grade year.
  - d. Students have the right of opting out of the transition meeting with agencies in SCS.
- 4. Part C transition participants. In the case of a child who was previously served under Part C of the Act, SCS shall, at the parent's(s') request, invite the Part C service coordinator or other representatives of the Part C system to the initial IEP meeting to assist with the smooth transition of services. (34 CFR 300.321(f))
- D. IEP team attendance. (34 CFR 300.321(e))
  - 1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and SCS agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
  - 2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:
    - a. The parent and SCS consent in writing to the excusal; and
    - b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

**E. Parent participation.**

- 1. SCS shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))**
  - a. Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and**
  - b. Scheduling the meeting at a mutually agreed on time and place.**
- 2. Notice. (34 CFR 300.322(b))**
  - a. General notice. The notice given to the parent(s):**
    - (1) May be in writing, or given by telephone or in person with proper documentation;**
    - (2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and**
    - (3) Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child under subdivision C 1 f of this section.**
  - b. Additional notice requirements are provided if transition services are under consideration.**
    - (1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system under subdivision C 4 of this section.**
    - (2) For secondary transition, the notice shall also:**
      - (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;**
      - (b) Indicate that SCS will invite the student; and**
      - (c) Identify any other agency that will be invited to send a representative.**
- 3. If neither parent can attend, SCS will use other methods to ensure parent participation, including individual or conference telephone calls, e-mail participation, or audio conferences (if there is appropriate access). If SCS uses an alternative means of meeting participation that results in additional costs, SCS is responsible for those costs. (34 CFR 300.322(c))**
- 4. A meeting may be conducted without a parent(s) in attendance if SCS is unable to convince the parent(s) that they should attend. In this case, SCS will have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))**
  - a. Detailed records of telephone calls made or attempted and the results of those calls;**
  - b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; or**
  - c. Detailed records of visits made to the parent's(s') home or place of employment and the results of those visits.**
- 5. SCS will take whatever action is necessary to ensure that the parent(s) understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))**
- 6. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The**

description shall be written in language understandable by the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.

7. SCS will give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days. (34 CFR 300.322(f))

8. The parent may request to review the IEP two days prior to the IEP meeting. In the event a draft IEP is developed prior to a scheduled IEP meeting, the IEP team shall make the draft available to the parents at least two business days in advance of the IEP meeting.

**F. Development, review, and revision of the IEP. (34 CFR300.324(a))**

1. In developing each child's IEP, the IEP team shall consider:
  - a. The strengths of the child;
  - b. The concerns of the parent(s) for enhancing the education of their child;
  - c. The results of the initial or most recent evaluation of the child; and
  - d. The academic, developmental, and functional needs of the child. (To include, as appropriate, the results of the child's performance on any general state or division-wide assessment.)
2. The IEP team also shall: (34 CFR 300.324(a))
  - a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;
  - b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
  - c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
  - d. Consider the communication needs of the child;
  - e. Consider the child's needs for benchmarks or short-term objectives;
  - f. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel, the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode, and
  - g. Consider whether the child requires assistive technology devices and services.

**SCS Procedures Assistive Technology**

*The IEP Team needs to consider whether an assistive technology device and/or service is necessary for a child with disabilities to be successful in school. SCS ensures that assistive technology*

**devices and/or services are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. The IEP Team needs to consider whether a technology device and/or service is medically or educationally necessary. If a device or service does not affect the child's learning, or is not necessary in order for the child to be successful in the school setting, or a medical device that is surgically implanted or the replacement of such a device (such devices are also excluded from the definition of related services), then SCS is not obligated to provide the device and/or service. If the IEP Team determines that the device and/or service is necessary for the child to be successful in school and affects learning then the device and/or service should be addressed in the IEP. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in the child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive a free appropriate public education.**

**An assistive technology device is 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. An assistive technology service is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:**

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

**SCS checks the hearing and vision of all children with disabilities as determined as necessary by the IEP Team. SCS ensures that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. SCS makes referrals to agencies that may assist with the purchase of glasses for those**



***children needing glasses and who need funding resources. Parents are contacted and referrals are made to the child's optometrist when a child's glasses no longer meet the needs of the child.***

3. If, in considering the special factors, the IEP Team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP Team must include a statement to that effect in the child's IEP.
4. The regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:
  - a. Appropriate positive behavioral interventions and strategies for the child; and
  - b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that must be provided for the child.
5. The IEP Team is not required to include information under one component of the child's IEP that is already contained under another component of the child's IEP.
6. The IEP Team considers all factors identified under a Free Appropriate Public Education (FAPE), as appropriate, and work toward consensus. If the IEP Team cannot reach a consensus, SCS must provide the parent or parents with prior written notice of SCS' proposals or refusals, or both, regarding the child's educational placement or provision of a Free Appropriate Public Education (FAPE). FAPE may include but not be limited too:
  - a. Age of eligibility
  - b. Program options
  - c. Residential placement
  - d. Proper functioning of hearing aids
  - e. Assistive technology
  - f. Transportation
  - g. Nonacademic and extracurricular services and activities
  - h. Physical education
  - i. Extended school year services
  - k. Length of school day

### **SCS Procedures for Homebound Instruction**

#### **Homebound Instruction**

***A child is eligible for homebound instruction if evidence verifies that he or she is unable to attend the public school as the result of physical, emotional, or psychiatric problems. Eligibility is determined by the***

***Homebound Coordinator on the basis of medical certification submitted by a licensed physician a licensed clinical psychologist, etc.***

***For a child eligible for special education and related services, the IEP Team instruction means academic instruction provided to children 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 must determine the delivery of services, including the number of hours of services. Homebound instruction should be initiated as soon as possible and instruction should begin no later than five business days upon receipt of the medical certification submitted by a licensed physician or licensed clinical psychologist. Children receiving homebound instruction should return to the school setting as soon as medically possible. The IEP Team must be involved in the review and termination process of homebound instruction. A Written Notice or Change in Service should be placed in the child's file and a copy sent to the parent.***

***The number of hours provided for homebound instruction should be based on a child's individual needs. The following is a suggested guideline. Elementary school children a minimum of five hours per week, middle school children a minimum of eight hours per week, and high school children a minimum of five hours per week for two credit subjects or ten hours per week for three or four subjects. It is the responsibility of the special education case manager to collaborate with the homebound instructor providing appropriate materials and information to enable the child to keep up with his/her class, to monitor the progress of the child, and provide information on curriculum and instructional strategies in order for the child to be successful. If the homebound instructor is not a certified special education teacher, the parent needs to be informed of the fact and informed how the homebound teacher and special education teacher must collaborate in meeting the needs of the child.***

***Homebased Instruction is also available for those students who have behavioral needs that interfere with the learning of others or when the student may be a danger to himself/herself or others. The same time is provided as that for a homebound student.***

- 7. For children who are in the custody of social services or other child welfare agency, the child's caseworker pursuant to the following conditions:**
  - a. The caseworker may not assume the role of the parent at the meeting; and**
  - b. If the caseworker is unable to attend the meeting as scheduled, the meeting may be held without the caseworker.**

- G. Content of the Individualized Education Program – SCS permits, with parent permission, required members of the IEP team to be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services. This will be documented in the minutes of the IEP meeting, and if prior to the meeting, the member provides the parent and the IEP team written input into the development of the child’s IEP. If the teacher is present at the meeting, and after providing an oral and/or written report of the student’s performance, the teacher may request to leave the meeting.**
- 1. A statement of the child’s present level of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum; and for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities.**
    - a. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.**
    - b. The present level of performance should directly relate to the other components of the IEP.**
  - 2. A statement of measurable annual goals, including academic and functional goals, to:**
    - a. Meet the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general education curriculum; and**
    - b. Meet each of the child’s other educational needs that result from the child’s disability.**
  - 3. If determined appropriate by the IEP team, as outlined in subdivision F 2 of this section, a description of benchmarks or short-term objectives. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. The IEP team shall document *8VAC20-81-110. Individualized education program Regulations Governing Special Education Programs for Children with Disabilities in Virginia* | 39 its consideration of the inclusion in the child’s IEP of benchmarks or short-term objectives. (34 CFR 300.320(a)(2)) Only those students enrolled in life-skills classes are required to have objectives in SCS.**
  - 4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child, as currently required; and**
    - a. To advance appropriately toward attaining the annual goal;**
    - b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and**
    - c. To be educated and participate with other children with disabilities and children without disabilities in any activity.**
  - 5. An explanation of the extent, if any, to which the child must not participate with children without disabilities in the regular class or in any activity.**

6. The following information concerning state and division-wide tests must be included:
  - a. A statement of any individual accommodations or modifications, in accordance with the guidelines approved by the Board of Education, in the administration of state tests of child achievement that are needed in order for the child to participate in the test;
  - b. If the IEP Team determines that the child must not participate in a particular state test of child achievement (or part of an test), statement of:
    - (1) Why that test is not appropriate for the child;
    - (2) How the child must be assessed, including participation in the alternate test for those children who meet the criteria for the alternate test; and
    - (3) How the child's nonparticipation in the test must impact the child's promotion; graduation with a modified standard, standard or advanced diploma; or other matters.
      - (a) At the end of the 7<sup>th</sup> grade, an explanation of the various diploma options must be outlined for parent or parents of a child with a disability as well as for the child.
      - (b) Children must be informed that they have the right to continue to attend school until they achieve a standard or advanced studies diploma or until age twenty-two, whichever comes first.
      - (c) Children must be informed that they have the right to return to school at any time if they have not obtained a standard or advanced studies diploma or until they reach the age of twenty-two.
  - c. A statement that the child must participate in either the state test for all children that is part of the state test program or one of the state's alternate tests.
  - d. A statement of any individual accommodations or modifications approved for use in the administration of division-wide tests of child achievement that are needed in order for the child to participate in the test;
  - e. If the IEP Team determines that the child must not participate in a particular division-wide test of child achievement (or part of an test), a statement of:
    - (1) Why that test is not appropriate for the child and why the child cannot participate in the regular assessment;
    - (2) How the child must be assessed and why the particular alternate assessment selected is appropriate for the student;
    - (3) How the child's nonparticipation in the test must impact the child's course; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. (34 CFR 300.320(a)(7))
8. A statement of: (34 CFR 300.320(a)(3))
  - a. How the child's progress toward the annual goals will be measured; and
  - b. When periodic reports on the progress the child is making toward

meeting the annual goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, and at least as often as parents are informed of the progress of their children without disabilities.

9. Initial transition services (34 CFR 300.101(b) and 34 CFR300.323(b))
  - a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the SCS will develop an IEP.
  - b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§ 1431et seq.) including:
    - (1) A statement regarding natural environments, and
    - (2) A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
  - c. These components of the child's IFSP may be incorporated into the child's IEP.

#### **SCS Preschool Procedures**

***SCS ensures that children participating in early-intervention programs assisted under Part C, and who must participate in preschool programs within the county have a smooth and effective transition process. If the child was previously served under Part C service coordinator or other representative is invited, with parent approval, to the IEP meeting to assist with the smooth transition of services. The following process is followed.***

#### **1. Transition**

- A. ***SCS works in conjunction with the Early Intervention Program to transition 2 year old children successfully into the school setting. A Transition Meeting is held each year by the 1<sup>st</sup> of April to transition those children requiring services. Representatives of the Early Intervention Program, Headstart personnel, and preschool personnel meet to receive referrals. SCS provides the following in this process.***
  - (1) Staff necessary for smooth transitioning***
  - (2) A place for the Transition Meeting***
  - (3) Tours of the preschool program***
  - (4) Any evaluation that may be needed for each child in considering appropriate placement in the least restrictive environment must be provided by SCS.***
    - (a) SCS may accept and incorporate all, part, or none of the IFSP plan presented by the Early Intervention Program into the IEP***
    - (b) SCS may accept evaluations from outside agencies and/or medical doctors or specialists if those reports meet the requirements of IDEA and SCS' policies and procedures***

*(5) Parents of preschool children must be afforded the same rights and protections under IDEA as all other special education parents.*

*(6) Parent must be given the option of continuing with the Early Intervention Program until age 3 or transferring to services provided by SCS at the age of 2.*

**2. Child Find**

*A. Representatives of the Early Intervention Program and SCS' personnel hold screenings at the area health departments each year in order to locate infants and preschool children eligible to receive special education and/or related services.*

*B. Area doctors and medical facilities are contacted each year to generate referrals.*

*C. Brochures are sent to professional offices in the immediate area to be distributed to residents of SCS in the search of children with disabilities.*

*D. Interagency Agreements are in effect to assist in the location of children.*

**3. Least Restrictive Environment (LRE)**

*A. A statement justifying the child's placement in terms of the least restrictive environment requirements must be included. SCS works in conjunction with the Headstart Program often sharing children (3 and 4 year olds) if their needs are such that a combination program is required. Some of the children may also need a combination program through the Kindergarten Program within the school.*

*B. Two-year old children normally attend 2 days per week in the beginning in order to transition slowly and then every day when they turn 3 years of ages unless the child's needs dictate otherwise. The LRE is determined based upon:*

*(1) The child's need/present level of performance*

*(2) In consideration of a full continuum of services*

*(3) With the following factors considered:*

*(a) Educated with nondisabled peers of the same age*

*(b) Access to facilities*

*(c) Participation in activities*

*(d) Involvement in regular education*

*(e) Establishment of IEP goals and objectives*

**4. Transition Activities**

*A. Children transitioning from the infant program to Scott County's Preschool Program may be involved in Day Camp where both agencies are available to meet with the children and their parents.*

*B. Activities are planned which include games, art activities, free medical screenings, contacts with related service providers, lunch, and an explanation of expected goals for the preschool program when the child enters school.*

**5. Eligibility**

**A. All disabilities are considered, however for a child between the ages of 2 and 5, inclusive, developmentally delayed is normally the prevalent identification**

**B. A child may be found to be developmentally delayed with a 40% delay in one area or a 30% delay in two or more areas.**

**Preschool children may be identified with any identification as appropriate rather than DD.**

**10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))**

**a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include age-appropriate:**

- (1) Measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and**
- (2) Transition services, including courses of study, needed to assist the child in reaching those goals. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.**

**b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements of subdivision 10 a of this subsection, the IEP shall also include a statement, if appropriate, of interagency responsibilities or any linkages.**

**SCS Secondary Transition Services**

***Secondary transition is a coordinated set of activities for a child with disabilities designed in an outcome oriented process, which promotes movement from school to post-school activities, including integrated employment or supported employment, post-secondary education, vocational training, continuing and adult education, adult services, independent living or community participation. The coordinated set of activities is based upon the individual child's needs, taking into account the child's preferences and interests. SCS must have parental consent to invite agencies to transition meetings. This normally transpires during the student's 11<sup>th</sup> grade year. This may include but not be limited to:***

- 1. *Instruction to prepare the child as a career and technical education program completer***
- 2. *Related Services***
- 3. *Community Experiences***
- 4. *Post-School Adult Living Skills***
- 5. *Daily Living Skills***
- 6. *Employment Opportunities***
- 7. *Functional Vocational Evaluation***

## **8. Occupational Readiness**

***Parents and students are informed of transition services in writing and asked if they would like to participate. If they refuse, the student will not go through the transition process. Documentation of their refusal will be kept in the student's file. If they change their minds, the student will be transitioned during their 12<sup>th</sup> grade year. If they disagree between themselves, the parent will dictate participation until the student turns 18 yrs. of age and then the student will make his/her own decision. If they elect to participate, a Meeting Notice will be sent along with a Written Notice and a Release of Information for each agency attending the meeting. Agencies will review the following information on the student at the transition meeting:***

- ☐ ***Interest Survey***
- ☐ ***Student schedule of classes***
- ☐ ***Cognitive skills***
- ☐ ***Achievement skills***
- ☐ ***Any assessment such as: KUDER, ASVAB, Career Cruising, etc.***
- ☐ ***Functional Skills Inventory***
- ☐ ***Limitations Inventory***
- ☐ ***Needed Accommodations/Modifications***
- ☐ ***Work Ethics***
- ☐ ***School Accomplishments to include: writing resume, complete job application, driver's ed., self-care skills, prevocational skills, etc.***

- c. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.**
- 11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student and parent(s) have been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR00.320(c))**

### **Procedures Followed Upon Reaching the Age of Majority**

- 1. At least one year prior to reaching the age of majority, children and parents are informed of their rights and options that the family may consider.**
  - A. The child can assign the parent "power of attorney" with regards to educational rights. This should be witnessed. The child can rescind the agreement at any time. The agreement would become null and void if the child became fully incapacitated during the time of special education eligibility. The child should have the ability to understand the meaning of a contract in order to assign "power of attorney."**



- B. The family can petition the court to declare the child “incapacitated” or “incompetent” which would require the hiring of an attorney...*
- C. The family can also obtain educational rights by having two professionals evaluate the child and certify the child is incapable of acting for himself/herself. Professionals recognized are as follows:
  - (1) Medical Doctor*
  - (2) Physician's Assistant*
  - (3) Certified Nurse Practitioner*
  - (4) Licensed Clinical Psychologist*
  - (5) Clinical Social Worker*
  - (6) Guardian Ad Litem for the Adult Child*
  - (7) Court Appointed Special Advocate**
- 2. Parents and the child must be notified when the transfer of rights occur. All rights accorded to parents under this part transfer to any child incarcerated in an adult or juvenile Federal, State, or local correctional institution.*

- H. Agency responsibilities for secondary transition services. (34 CFR300.324(c))
  - 1. If a participating agency, other than SCS, fails to provide the transition services described in the IEP of a student with a disability, SCS shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
  - 2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.
- I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))
  - 1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.
  - 2. All requirements regarding IEP development, review, and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard, or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.
  - 3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:
    - a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.
    - b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.

- c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

#### **Procedures SCS Students Incarcerated**

*Both male and female incarcerated children between the ages of 18 and 21 are housed at the Southwest VA Regional Jail located in Duffield, Virginia and within the jurisdiction of Scott County. The regional jail also serves Lee and Wise Counties. SCS has an interagency agreement with the Southwest VA Regional Jail to educate those special education children with disabilities requesting services while protecting their right to a FAPE. Any child with a disability has a right to participate in the program if they left school with anything less than a standard or advanced studies diploma. The Southwest VA Regional Jail staff must survey each incarcerated person to determine if they received special education services while in school and continue to want services. A representative must send the information to the Administrator of Special Education or the Teacher/Coordinator assigned to the Jail from SCS in order to initiate the referral process.*

#### **Responsibilities of SCS and Southwest VA Regional Jail**

***SCS must be responsible***

- 1. Provide a certified special education teacher or certified teacher who collaborates closely with the special education teacher (taking direction from the special education teacher) and a part-time secretary as necessary.***
- 2. Provide for a twelve (12) month Educational Program***
- 3. Provide materials and equipment necessary for the child to meet the goals and objectives set forth in the IEP***
- 4. Provide referral, test, eligibility, IEP and transitional services***
- 5. Inform the child or children of their right to a free appropriate public education***
- 6. Inform the child or children of their rights upon reaching the age of majority***
- 7. Provide special education and related services as necessary to meet the needs of the child if the child wants services while incarcerated***
- 8. Give the child the opportunity to participate in special education and related services or deny services.***

#### **Responsibilities of Regional Jail**

1. *Provide classroom and office space and appropriate furniture*
2. *Provide security, including screening of children who are high security risks or of children who must be kept separate from one another*
3. *Provide a liaison to coordinate the interaction between educational staff and jail staff*
4. *Provide use of telephone, fax equipment, and copy machine*
5. *Transport children to and from the classroom*
6. *Provide the school with referrals*

## **Children who Transfer 8VAC20-81-120.**

### **8VAC20-81-120. Children who Transfer**

- A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to a local educational agency in Virginia within the same school year are subject to the following provisions. (34 CFR 300.323(e), (f), and (g))**
- 1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.**
    - a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.**
    - b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.**
  - 2. The new local educational agency shall provide a free appropriate public education to the child, including ensuring that the child has available special education and related services, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:**
    - a. Adopts and implements the child's IEP from the previous local educational agency with the parent's consent; or**
    - b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP with the parent's consent that meets the requirements in this chapter.**

3. The new local educational agency may develop and implement an interim IEP with the parent's consent while obtaining and reviewing whatever information is needed to develop a new IEP.
  4. If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.
- B. The new local educational agency shall provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.
- C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.
1. During the evaluation period, the child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.
  2. The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter.
- D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local educational agency, the new local educational agency shall review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team is responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new local educational agency from the former Comprehensive Services Act team. (The CSA Implementation Manual)

### **SCS Children Who Transfer - Process and Procedures**

- A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to SCS within the same school year are subject to the following provisions. (34 CFR 300.323(e), (f), and (g))
1. SCS shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the

- previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from SCS.
- a. If the previous local educational agency is not forthcoming in providing the records for the child, SCS will contact the Virginia Department of Education for assistance in resolving the matter.
  - b. If SCS is unable to obtain the IEP from the previous local educational agency or from the parent, SCS is not required to provide special education and related services to the child. SCS shall place the student in a general educational program and conduct an evaluation if SCS determines that an evaluation is necessary.
2. SCS will provide a free appropriate public education to the child, including ensuring that the child has available special education and related services, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until SCS either:
    - a. Adopts and implements the child's IEP from the previous local educational agency with the parent's consent; or
    - b. Conducts an evaluation, if determined necessary by SCS, and develops and implements a new IEP with the parent's consent that meets the requirements in this chapter.
  3. SCS may develop and implement an interim IEP with the parent's consent while obtaining and reviewing whatever information is needed to develop a new IEP.
  4. If the parent(s) and SCS are unable to agree on interim services or a new IEP, the parent(s) or SCS may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, SCS will provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.
- B. SCS will provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.
  - C. If SCS determines it necessary to conduct an evaluation of the child, SCS will provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.
    1. During the evaluation period, the child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.
    2. SCS will inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter.
  - D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to SCS, SCS will review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team is responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in SCS from the former Comprehensive Services Act team. (The CSA Implementation Manual).

### **SCS Procedures for Transfer of Student**

When students transfer from another school division into SCS, the parent(s) is given a questionnaire to complete. If the parent indicates that their child was a child with a disability, a special education teacher will meet with them to complete an Entry of Transfer Special Education Form, which contains the following:

❖ Documentation of data presented from the sending school to include:

- 504 or IDEA
- 504 Implementation Plan
- Eligibility Determination
- IEP
- Achievement testing
- Psychological
- Medical
- Observation
- Sociocultural
- Behavior
- Speech/Language
- Audiological
- Vision/Hearing

If there is appropriate documentation presented, SCS may adopt and implement the child's IEP from the previous school with the parent's consent, or SCS may determine to complete a new evaluation in order to implement a new IEP. SCS may develop an interim IEP with parent permission until new data can be received (within 30 business days).

If there is no information presented from the sending school, SCS will call the sending school to determine if the student was receiving special education services and provide a release of information so that the school will send needed documentation. SCS will call each week that the child's records are not received. If the records are not received within 30 calendar days, it will be treated like a new referral and testing will begin. The parent will receive a Prior Written Notice indicating the actions of SCS.

SCS is obligated under the same requirements when a student with disabilities or a residentially placed student goes to another placement outside our division.

## **LEAST RESTRICTIVE ENVIRONMENT**

### **8 VAC 20-81-130**

Children with disabilities must be able to participate in regular programs, activities, other services, nonacademic as well as extracurricular activities as much as possible and to access special education programs as the need arises. Non-academic services and extracurricular services may include counseling services, athletics, transportation, health services, recreational activities, or clubs. For those children in public or private institution, SCS must ensure that requirements for least restrictive environment are met. Children are tracked in reference to their disabilities and to the services that they receive.

#### **8 VAC 20-81-130 Least Restrictive Environment and Placements**

##### **A. General Least Restrictive Requirements**

1. The following procedures must be adhered to:
  - a. In order to ensure that to the maximum extent practicable, children with disabilities, including those in public or private institutions or other care facilities are educated with children without disabilities
  - b. SCS ensures that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for children without disabilities, SCS ensures that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. SCS must provide supplementary aids and services, determined appropriate and necessary by the IEP team, for the child with a disability to participate in nonacademic settings. 8VAC20-81-100 H.) (34 CFR 300.117)
1. For children placed by local school divisions in public or private institutions or other care facilities, SCS must, where necessary, make arrangements with public and private institutions to ensure that requirements of least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

##### **B. Continuum of Alternative Placements** (§ 22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. SCS ensures that a continuum of alternative placements is available to meet the need of children with disabilities for special education and related services.
2. The Continuum must:
  - a. Include the alternative placements listed in the definition of special education listed in the term “special Education” at 8VAC20-81-10

including instruction in regular classes; special classes; special schools; home instruction; and instruction in hospitals and institutions; and

(1) Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the child's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population of category of children with disabilities must be acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions must be based on the individual needs of each child.
4. SCS must document all alternatives considered and the rationale for choosing the selected placement.
5. Children with disabilities are served in a program with age-appropriate peers unless it is shown that for a particular child with a disability an alternative placement is appropriate as documented by the IEP.

**C. Placements (Regulations Establishing Standards for Accrediting Public Schools in Virginia)(8VAC20-131); 34 CFR 300.116)**

1. Indetermining the educational placement of a child with a disability, including a preschool child with a disability, SCS ensures that:
  - a. The placement decision is made by the IEP Team in conformity with least restrictive environment.
  - b. The child's placement is:
    - (1) Determined at least annually,
    - (2) Based on his/her IEP, and
    - (3) As close as possible to his home.
  - c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.
  - d. In selecting the least restrictive environment, potential harmful effects on the child and quality of services are considered.
  - e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
2. Home-based instruction must be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.
3. Homebound Instruction is made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For children eligible for special education and related services, the IEP team must revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

**In SCS Alternative Placements May Include (but not be limited to):**



1. Alternative Education
2. Regular Classroom Instruction/Monitored
3. Self-contained Academic and Non-Academic Program
4. Self-contained Academic Program with Non-academic Instruction with Peers
5. Hospital
6. Institutions Including Woodrow Wilson Rehabilitation Center and Other State Facilities
7. Homebound Instruction as Determined by the IEP Team
8. Home-based Instruction must be provided to those children whose IEPs require the delivery of services in the home or other agreed-upon setting.
9. Consultative Instruction
10. Private Day School or Special Schools
11. Public and/or Private Residential
12. Resource Room Instruction
13. Itinerant Instruction
14. Home Schooling/Monitored
15. Itinerant Instruction
16. Center-based Instruction with exposure to non-disabled peers but not on a daily basis

Placement decisions are made by the IEP Team based upon the needs of the student.

**PLACEMENT OF CHILDREN AT THE VIRGINIA SCHOOL FOR  
THE DEAF AND THE BLIND AT STAUNTON  
8 VAC 20-81-140**

**8 VAC 20-81-140 Placement of Children at the Virginia School for the Deaf and Blind at Staunton**

- B. Placements.** Placements must be made by SCS, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton (Virginia School). The Virginia School shall determine if the child meets the admission criteria of the Virginia school. (§ 22.1-348 of the Code of Virginia)
- C. Eligible Student.** When an eligible child is placed in the Virginia schools, SCS is responsible for ensuring compliance with the requirements of this chapter.
- D. For children who are residential children,** the Virginia school is responsible for transportation. For children who are day children, SCS is responsible for transportation to and from the school. (§ 22.1-347 C of the Code of Virginia)

**SCS Contractual Agreement.** A contractual agreement must be established between the Virginia school and SCS for each child enrolled in the Virginia School.

- 1. This agreement must include, but not be limited to:
  - a. The educational services provided by each party;
  - b. The responsibility for development of IEPs;
  - c. The responsibility for completing evaluations and determining continuing eligibility for special education and related services;
  - d. The responsibility for providing procedural safeguards and a free appropriate public education.
- 2. The Virginia school and SCS must review the contractual agreement at least annually and revise it as necessary.

## **PRIVATE SCHOOL PLACEMENT 8 VAC 20-81-150**

### **SCS 8 VAC 20-81-150 Private School Placement**

#### **A. Private School Placement by SCS or Comprehensive Services Act Team**

1. When a child with a disability is placed by SCS or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private school or facility that is licensed or has a certificate to operate, SCS is responsible for ensuring compliance with the requirements of this chapter, including participation in state and division-wide tests. SCS ensures that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the private school or facility. (34 CFR 300.325(c))
2. Before SCS places a child with a disability in a private school or facility that is licensed or has a certificate to operate, SCS initiates and conducts a meeting in accordance with 8VAC 20-81-110 to develop an IEP for the child. SCS sees that a representative of a private special education school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a))
3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, SCS must ensure that a representative of the private special education school or facility attends the meeting. If the representative cannot attend, SCS must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a)(2))
4. After a child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of SCS. (34 CFR 300.325(b)(1))
5. If the private school or facility initiates and conducts these meetings, SCS must ensure that the parent or parents and a representative of SCS: (34 CFR 300.325 (b)(2))
  - a. Are involved in any decision affecting the child's IEP;
  - b. Agree to any proposed changes in the program before those changes are implemented; and
  - c. Are involved in any meetings that are held regarding reevaluation.
6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, test, reevaluation, and termination of services remains with the local school division. (34 CFR 300.325 (c))
7. When a child with a disability is placed by SCS or the Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter must be extended to the child. (34 CFR 300.101)

8. If the parent or parents request a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by the Comprehensive Services Act team, the child must remain in the previous IEP placement agreed upon by the parent or parents and SCS prior to placement by the Comprehensive Services Act team. (34 CFR 300.2 (c))
9. When a child with a disability is placed in a private school or facility that is out of state, the placement must be processed through the Interstate Compact on the Placement of Children, in accordance with the Code of Virginia. (§ 22.1-218.1 of the Code of Virginia)

**B. Placement of Children by Parents if a Free Appropriate Public Education is at Issue**

1. This section does not require SCS to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if SCS made a free appropriate public education available to the child and the parent or parents elected to place the child in a private school or facility. (343 CFR 300.148(a))
2. Disagreements between a parent or parents and SCS regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8 VAC 20-81-210. (34CFR 300.148(b))
3. If the parent or parents of a child with a disability, who previously received special education and related services under the authority of SCS, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by SCS, a hearing officer may require SCS to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that SCS had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by SCS. (34CFR 300.148 (c))
4. The cost of reimbursement described in this section may be reduced or denied: (34 CFR 300.148(d))
  - a. If (i)
    1. At the most recent IEP meeting that the parent or parents attended prior to removal of the child from SCS, the parent or parents did not inform the IEP team that they were rejecting the placement proposed by SCS to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense;
    2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent or parents did not give written notice to SCS of the information described above;
  - b. If, prior to the parent's or parents' removal of the child from SCS, SCS informed the parent or parents, through the notice requirements

described in 8 VAC 20-80-76, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent or parents did not make the child available for the evaluation; or

- c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.
  - 5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's or parents' failure to provide the notice to the local division if: (34 CFR 300.148(e))
    - a. The parent is illiterate or cannot write in English;
    - b. Compliance with this section would likely result in physical or serious emotional harm to the child;
    - c. SCS prevented the parent or parents from providing the notice; or
    - d. The parent or parents had not received notice of the notice requirement in this section.
- C. Parentally placed private school children with disabilities. The provisions of this section apply to children with disabilities who are enrolled by their parent(s) in private schools.
- 1. The following definitions are applicable for purposes of this subsection.
    - a. The term "private school" includes:
      - (1) Private, denominational, or parochial schools in accordance with § 22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
      - (2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
      - (3) Students who are home-tutored in accordance with § 22.1-254 of the Code of Virginia; or
      - (4) Students who receive home instruction in accordance with § 22.1-254.1 of the Code of Virginia.
    - b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. (34 CFR 300.13)
    - c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12. (34 CFR 300.36)
  - 2. Child find. (§ 22.1-254.1 of the Code of Virginia; 34 CFR 300.130, 34 CFR 300.131(a) and
    - a. SCS must locate, identify, and evaluate all private school children with disabilities including children attending religious schools, who reside in the jurisdiction of SCS. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.
    - b. SCS consults with appropriate representatives of the private schools and representatives of parents of parentally placed private school

- children with disabilities on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:
- (1) How parentally placed private school children suspected of having a disability can participate equitably; and
  - (2) How parents, teachers, and private school officials will be informed of the process.
- c. The child find process is designed to ensure:
- (1) The equitable participation of parentally placed private school children; and
  - (2) An accurate count of these children.
3. Services plan. SCS ensures that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part. (34 CFR300.132(b))
4. Expenditures. (34 CFR 300.133)
- a. To meet the requirement of the Act, SCS spends the following on providing special education and related services to private school children with disabilities:
- (1) For children, aged three to 21, inclusive, an amount that is the same proportion of SCS's total subgrant under § 1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children with disabilities in its jurisdiction, aged three to 21; and
  - (2) For children, aged three to five, inclusive, an amount that is the same proportion of SCS's total subgrant under § 1419 of the Act as the number of privately placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by SCS, is to the total number of children with disabilities in its jurisdiction, aged three to five.
  - (3) If SCS has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, SCS will obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.
  - (4) SCS may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision.
- b. In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, SCS, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local school division.
- c. After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, SCS shall

determine the number of parentally placed private school children with disabilities attending private schools located in SCS, and ensure that the count is conducted on a date between October 1 and December 1 of each year as determined by the Superintendent of Public Instruction or designee. The child count will be used to determine the amount that the SCS will spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.

- d. Expenditures for child find activities, including evaluation and eligibility, described in 8VAC20-81-50 through 8VAC20-81-80, may not be considered in determining whether SCS has met the expenditure requirements of the Act.
- e. SCS is not prohibited from providing services to parentally placed private school children with disabilities in excess of those required by this section.

5. Consultation.

- a. SCS will consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. This includes: (34 CFR 300.134(a), (c), and (d))
  - (1) How the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
  - (2) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;
  - (3) The types of services, including direct services and alternate service delivery mechanisms;
  - (4) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and
  - (5) How and when those decisions will be made, including how parents, teachers and private school officials will be informed of the process.
- b. If SCS disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, SCS will provide to the private school officials a written explanation of the reasons why SCS chose not to provide services directly or through a contract. (34 CFR 300.134(e))
- c. Following consultation, SCS will obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, SCS will forward the documentation of the consultation to the Virginia Department of Education. (34 CFR 300.135)
- d. A private school official has the right to submit a complaint to the Virginia Department of Education that SCS: (34 CFR 300.136)
  - (1) Did not engage in consultation that was meaningful and timely; or

- (2) Did not give due consideration to the views of the private school official.
- e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by SCS and the appropriate documentation. (34 CFR 300.136)
  - (1) If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.
  - (2) The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.
- 6. Equitable services determined. (34 CFR 300.137)
  - a. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
  - b. Decisions about the services that will be provided to the parentally placed private school children with disabilities are made in accordance with the consultation process under subdivision 5 of this subsection and a services plan.
  - c. SCS will make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.
  - d. SCS will:
    - (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
    - (2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, SCS will use other methods to ensure participation by the private school, including individual or conference telephone calls.
- 7. Services provided. (34 CFR 300.138 and 34 CFR 300.132(b))
  - a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to these children do not have to meet the requirements for highly qualified special education teachers.
  - b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
  - c. No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
  - d. Services provided in accordance with a services plan.
    - (1) Each parentally placed private school child with a disability who has been designated to receive services under this subsection will have a services plan that describes the specific special education and related services that SCS will provide to the child in light of the



- services that SCS has determined it will make available to private school children with disabilities.
- (2) The services plan, to the extent appropriate, will meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.
  - e. The services will be provided:
    - (1) By employees of SCS; or
    - (2) Through contract by SCS with an individual, association, agency, organization, or other entity.
  - f. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, will be secular, neutral, and nonideological.
  8. Location of services. Services provided to a private school child with a disability may be provided on site at the child's private school, including a religious school, to the extent consistent with law. (34 CFR 300.139(a))
  9. Transportation. (34 CFR 300.139(b))
    - a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability will be provided transportation:
      - (1) From the child's school or the child's home to a site other than the private school; and
      - (2) From the service site to the private school or to the child's home depending on the timing of the services.
    - b. SCS is not required to provide transportation from the child's home to the private school.
    - c. The cost of the transportation described in this subsection may be included in calculating whether SCS has met the requirement of this section.
  10. Procedural safeguards, due process, and complaints. (34 CFR 300.140)
    - a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that SCS has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.
    - b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that SCS has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally placed private school children with disabilities.
    - c. State complaints. Complaints that the Virginia Department of Education or SCS has failed to meet the requirements of this section may be filed under the procedures in 8VAC20-81-200.
    - d. The dispute resolution options described in subdivisions 10 b and 10 c of this subsection apply to the local educational agency in which the private school is located. (34 CFR 300.140(b)(2))
  11. Separate classes prohibited. SCS may not use funds available under the Act for classes that are organized separately on the basis of school

- enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools. (34 CFR 300.143)
12. Requirement that funds not benefit a private school. SCS may not use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. SCS will use funds provided under the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school. (34 CFR 300.141)
  13. Use of public school personnel. SCS may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally placed private school children with disabilities and if those services are not normally provided by the private school. (34 CFR 300.142(a))
  14. Use of private school personnel. SCS may use funds available under the Act to pay for the services of an employee of a private school to provide services to a parentally placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control. (34 CFR 300.142(b))
  15. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. (34 CFR 300.144)
    - a. SCS will keep title to and exercise continuing administrative control of all property, equipment, and supplies that SCS acquires with funds under the Act for the benefit of parentally placed private school children with disabilities.
    - b. SCS may place equipment and supplies in a private school for the period of time needed for the program.
    - c. SCS will ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.
    - d. SCS will remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.
    - e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.
  16. Reporting requirements. SCS maintains in its records, and provide to the Virginia Department of Education, the following information related to parentally placed private school children: (34 CFR 300.132(c))
    - a. The number of children evaluated;
    - b. The number of children determined to be children with disabilities; and
    - c. The number of children served.

## **SCS Private School Placements – Process and Procedures**

- A. Child Find Activities relative to private, including religious, elementary and secondary schools located within this jurisdiction, include parentally-placed private school children who reside in a state other than Virginia or a country other than the United States. SCS consults with appropriate representatives of private school children with disabilities on how to carry out the child find activities.**
- 1. To the extent consistent with the number and location of the children with disabilities who are enrolled by their parents in private elementary and secondary schools, which are located within Scott County, Scott County Public Schools provides for the child's participation in special education and related services with parent permission in accordance with the requirements outlined below:**
    - a. Scott County conducts a "thorough and complete child find process" to determine the exact number of parentally placed private school children, who are attending private schools located within Scott County. This process must ensure "equitable participation" by each of these children, provide an accurate count of such children, and include activities, which are completed in a comparable time period as, and which are similar to, those undertaken on behalf of public school children.**
      - (1) Special education pamphlets and brochures are made available to private school parent(s). Each parent who homeschools their child is provided contact information and offered the same program and services that students with disabilities receive in Scott County.**
      - (2) A representative of SCS contacts the principal of the Gate City Christian School each year to ask that they participate in the planning and development of a program for their students.**
      - (3) An Interagency Agreement is also signed by the Gate City Christian School and SCS.**
      - (4) Child Find information is provided to media service providers.**
      - (5) Child Find information is sent to the local doctors and child care facilities.**
      - (6) Once identified as a child with disabilities, children in private school programs are tracked and programmed in SCS' child accounting program as any child within the jurisdiction of SCS.**
      - (7) The same timelines are followed as for any student with disabilities attending a school in Scott County.**
      - (6) Parents who place their children in private schools have the option of not participating in Scott County School's child find process.**
      - (7) If the parent of a child who is home schooled, or who is parentally-placed in a private school, refuses consent for either an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, SCS may not use mediation or a due process hearing to secure parental consent. However, if the parent fails to**

provide consent, SCS is not required to consider the child eligible for equitable services.

- (8) To document that SCS has made reasonable efforts to obtain parental consent, when required, SCS documents its attempts to obtain consent using the same procedures outlined in the Virginia Regulations.
- b. As part of the child find process, and during the design and development of special education and related services for parentally placed private school children, SCS completes “timely and meaningful consultation” with representatives of both the private schools, and of the parents of parentally-placed private school children regarding the following:
  - (1) The child find process, including how these children can participate equitable in the process, and how parents, teachers, and private school officials must be informed of the process.
    - (a) Letters are sent annually inviting the parent(s) of private school children and the principal of the private Christian School located within the jurisdiction of SCS to participate in the Child Find Process and in the development of the special education program and services for the school year.
    - (b) Personal meetings are held to discuss programs and services.
    - (c) Screening options are discussed to include vision, hearing, speech, fine motor skills, gross motor skills, audiological testing, etc.
  - (2) When parents of private school children determine that they would be interested in special education programs and services. The parent(s) is consulted on how to spend the money.
    - (a) Monies may be spent, but not limited to, for the following:
      - [1] salaries calculated on a proportionate amount of time for special education teachers and/or service providers
      - [2] technology devices deemed necessary by the IEP team for the success of the child
      - [3] accommodations/modifications
      - [4] tutoring
      - [5] materials
  - (3) The consultation process, including how the process must operate throughout the school year to ensure that parentally placed private school children with disabilities, who are identified through the child find process, can “meaningfully participate” in special education and related services.
    - (a) Informational letters are given to the parent(s) requesting homeschooling by the Director of Homeschool.
    - (b) A representative of SCS contacts (by phone, in person, or in writing) the Principal of the Private Christian School to set up a meeting with the Director of Special Education.
    - (c) Parents are requested to contact the Director of Special Education to learn more about special education programs and services.

- (d) A representative of the Christian School or the parent of any private school child may contact the Director of Special Education at anytime to make a referral for consultation, screenings, and/or evaluation.
  - (e) Once contacted, the Director of Special Education sets up a meeting to inform the representative(s) and/or parent(s) about the special education process, how to access special education programs and services, the funding formula, and how children with disabilities are tracked in the accounting process.
  - (e) Once identified as a child with a disability, the IEP Team must determine how the child can “meaningfully participate” in special education and related services.
- (4) How, where, and by whom special education and related services must be provided to these children, including the types of services (i.e. direct or alternative service delivery mechanisms), and how such services must be apportioned if funds are insufficient to serve all children, including how and when these decision must be made; and
  - (a) Funds must be apportioned using the same formula to determine funding at this time if there is a cut in funding.
  - (b) Services must be provided as determined by the IEP Team and in accordance with all children with disabilities whether private or public school.
  - (c) If funding is cut, a new calculation page must be sent to the parent(s) of the private school child with disabilities in a timely fashion so that the parent(s) can see the new calculation and call the Director of Special Education if they have questions.
- (5) If a disagreement arises between SCS and the private school representatives regarding the provision of services, or the types of services provided, SCS provides the private school representatives with a written explanation of the reasons SCS opted not to provide services either directly or through a contract.
- c. Once “timely and meaningful consultation” has occurred, SCS obtains a written affirmation of the process, which has been signed by the participating private school representatives. If the representatives do not provide the affirmation within a reasonable period of time, SCS must forward documentation of the consultation to VDOE.
- d. If SCS does not engage in timely and meaningful consultation, or if SCS fails to give “due consideration” to the views of the private school representatives, a private school representative may file a State complaint with VDOE. If the private school representative is dissatisfied with the outcomes of the state complaint process, the complaint may be submitted to the Secretary of Education at USDOE for review.
- e. The services provided by SCS to parentally-placed private school children may be provided by either SCS’ employees or through a contracted provider, and such service, including materials and equipments must be secular, neutral, and nonideological. These

services may be provided to the children on the premises of private, including religious, schools to the extent consistent with law.

- f. SCS maintains for its records, and submits to VDOE the following: the number of parentally placed private school children evaluated, the number of children determined eligible for special education and related services, and the number of children actually served.
- g. Parental consent is required for disclosure of records of parentally-placed private school children between SCS and the private institution. If a child is enrolled, or is going to enroll in a private school that is not located in the SCS District, parental consent must be obtained before any personally identifiable information about the child is released between the LEA where the private school is located and SS, the place of residence.

**B. Placement of Children by Parents**

- 1. SCS ensures that a service plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services.
  - (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
  - (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, SCS must use other methods to ensure participation by the private school, including individual or conference telephone calls.
- 2. Expenditures.
  - a. To meet the requirement of IDEA, SCS spends the following on providing special education and related services to private school children with disabilities:
    - (1) For children, aged three to 21, inclusive, an amount that is the same proportion of SCS total subgrant under IDEA as the number of private school children with disabilities, aged three to 21, inclusive, residing in this jurisdiction is to the total number of children with disabilities in this jurisdiction, aged three to 21, inclusive.
    - (2) For children, aged two to five, inclusive, an amount that is the same proportion of the SCS total subgrant under the act as the number of private school children with disabilities, aged two to five, inclusive, residing in its jurisdiction, is to the total number of children with disabilities in its jurisdiction, aged three to five, inclusive.
    - (3) The cost for child find, including individual evaluations, is not considered in the calculation of the expenditure of the proportionate share of federal funds.
    - (4) If SCS has not expended for equitable services all the proportionate amount of Federal funds, both 611 and 619 funding, to be provided for parentally-placed private school children with disabilities by the end of the fiscal year for which Congress appropriated the funds, SCS will obligate the remaining funds for services to these children during a carry-over period of one additional year.

- (5) State and local funds may supplement, but not supplant, the federal funds required to be expended for parentally-placed private school children with disabilities.
  - (6) SCS makes the final decisions with respect to the services to be provided to eligible private school children.
- 3. Services provided
  - a. The services provided to private school children with disabilities is provided by personnel meeting the same standards as personnel providing services in the public schools.
  - b. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
  - c. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
  - d. Services provided in accordance with a service plan.
    - (1) Each private school child with a disability who has been designated to receive services must have a Service Plan that describes the specific special education and related services that SCS must provide to the child in light of the services that SCS has determined it must make available to private school children with disabilities.
    - (2) The Service Plan will become part of the student's IEP.
- 4. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, or in a public setting such as the public library. The setting will be agreed upon by SCS and the parent(s).
- 5. Transportation
  - a. If necessary for the child to benefit from or participate in the services provided, a private school child with a disability must be provided transportation:
    - (1) From the child's school or the child's home to a site other than the private school; and
    - (2) From the service site to the private school or to the child's home depending on the timing of the services.
  - b. SCS is not required to provide transportation from the child's home to the private school.
  - c. The cost of the transportation described in this subsection may be included in calculating whether SCS has met the requirements of the set-aside money for private school children.
- 6. Procedural safeguards, due process, and complaints.
  - a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that SCS has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.
  - b. A request for a due process hearing regarding the evaluation requirements must be filed with SCS where the private school is located. A parent may file a complaint under the State Department of Education's (SEA) Complaint Resolution Procedures that the SEA or SCS failed to meet the requirements in: basic requirements,

expenditures and consultation; and, equitable services, location of services and transportation, complaints, funding, personnel, property, equipment and supplies. The parent(s) may also file due process hearing for evaluation and consent requirement issues.

- c. **State complaints.** Complaints may be filed with the Virginia Department of Education Complaint's Department. If the Director of Special Education is made aware of a complaint, he/she will schedule a meeting and try to come to a consensus concerning the disagreement. At that meeting the parent(s) or Christian School Representative will be given information pertaining to Mediation and Due Process.

### **SCS Timelines of Local Procedures**

1. Brochures are distributed to Private Schools, Child Care Centers, Physicians' Offices, Lawyers' Offices, Department of Social Services, etc., yearly.
2. Information pertaining to disabilities and services is distributed to local organizations upon request and published in the local paper.
3. New referrals are made to the Child Study Teams located within each of the respective schools. The Child Study Team meets within 10 days of referral.
4. If referred to special education for a formal assessment, a referral packet including parent permission for assessment is forwarded to the central office within 3 days.
5. Once referred to the central office, the referral packet is stamped with date received. Within 65 business days of being received in the central office, testing is completed and an eligibility meeting held.
6. Once a child with a disability has been made eligible, an IEP meeting is held within 30 calendar days and an IEP plan developed.
7. If a child transfers in from outside the county and has previously been identified as a child with a disability, an IEP meeting must be called within 10 calendar days of having knowledge that the child was receiving special education services. The IEP must be reviewed for its appropriateness. The IEP can be accepted by the IEP team, an addendum may be added for revisions to the IEP, or a new IEP may be written. If there is a question pertaining to eligibility, the IEP team may request new testing. Parents must be informed of their procedural safeguards under IDEA and given a copy of their parental rights in special education.
8. IEPs are reviewed annually on or before the date that the previous IEP was written.
9. For triennial evaluations (every 3 years), a formal assessment is not required if the parent, including the Eligibility Team, agree to accept previous testing and determine that the child's identification remains the same as the previous determination. A formal meeting is not required, if the caseworker documents that the parent agrees that not formal meeting was necessary.



## DISCIPLINE PROCEDURES

### 8 VAC 20-81-160

#### 8VAC20-81-160. Discipline Procedures

##### **A. General.** (§ 22.1-277 of the Code of Virginia; 34 CFR 300.530(a); 34 CFR 300.324(a)(2)(i))

1. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures.
2. In the event that the child's behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:
  - a. Developing goals and services specific to the child's behavioral needs;  
or
  - b. Conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child's behavioral needs.
3. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.
  - a. In reviewing the disciplinary incident, school personnel may review the child's IEP and any behavioral intervention plan, or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.
  - b. School personnel may convene an IEP team for this purpose.

##### **B. Short-term removals.**

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10 cumulative school days in a school year. (34 CFR 300.530(b))
  - a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.
  - b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C of this section apply.
    - (1) The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.
    - (2) These removals only constitute a change in placement if the local educational agency determines there is a pattern.
2. Services during short-term removals.

- a. The local educational agency is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed. (34 CFR 300.530(b)(2))
- b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations. (34 CFR 300.530(b)(2))
- c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC § 1412(a)(16)(A))

**C. Long-term removals.**

- 1. A long-term removal is for more than 10 consecutive school days; or (34 CFR 300.530; 34 CFR 300.536)
- 2. The child has received a series of short-term removals that constitutes a pattern:
  - a. Because the removals cumulate to more than 10 school days in a school year;
  - b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and
  - c. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
- 3. The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings. (34 CFR 300.530(a) and (b) and 34 CFR 300.536)
- 4. On the date on which the decision is made to long-term remove the student because of a violation of a code of student conduct, the local educational agency shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards. (34 CF 300.530(h))
- 5. Special circumstances. (34 CFR 300.530(g))
  - a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:
    - (1) The child carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or
    - (2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on

school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education;  
or

(3) The child inflicts serious bodily injury upon another person at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.

b. For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.

6. Services during long-term removals.

a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to: (34 CFR 300.530(d))

(1) Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and

(3) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC § 1412(a)(16)(A))

c. The IEP team determines the services needed for the child with a disability who has been long-term removed. (34 CFR 300.530(d)(5) and 34 CFR 300.531)

**D. Manifestation determination.** (34 CFR 300.530(c), (e), (f), and (g))

1. Manifestation determination is required if the local educational agency is contemplating a removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.

2. The local educational agency, the parent(s), and relevant members of the child's IEP team, as determined by the parent and the local educational agency, constitute the IEP team that shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made.

3. The IEP team shall review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent(s).

4. The IEP team then shall determine the conduct to be a manifestation of the child's disability:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

- (2) If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.
5. If the IEP team determines that the local educational agency failed to implement the child's IEP, the local educational agency shall take immediate steps to remedy those deficiencies.
6. If the IEP team determines that the child's behavior was a manifestation of the child's disability:
  - a. The IEP team shall return the child to the placement from which the child was removed unless the parent and the local educational agency agree to a change in placement as part of the modification of the behavioral intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C 5 a of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45-day period.
    - (1) Conduct a functional behavioral assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child.
      - (a) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.
      - (b) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or
    - (2) If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior.
7. If the IEP team determines that the child's behavior was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C 6 a of this section.

**E. Appeal. (34 CFR 300.532(a) and (c))**

1. If the child's parent(s) disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent(s) may request an expedited due process hearing.
2. A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due process hearing.
3. The local educational agency is responsible for arranging the expedited due process in accordance with the Virginia Department of Education's hearing procedures at 8VAC20-81-210.

- a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.
- b. The special education hearing officer shall make a determination within 10 school days after the hearing.
- c. Unless the parent(s) and the local educational agency agree in writing to waive the resolution meeting, or agree to use the mediation process,
  - (1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.
  - (2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.
- d. The decisions on expedited due process hearings are appealable consistent with 8VAC20-81-210.

**F. Authority of the special education hearing officer.** (34 CFR 300.532(a) and (b))

1. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is substantially likely to result in injury to self or others.
2. The special education hearing officer under 8VAC20-81-210 may:
  - a. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of subsections C and D of this section, or that the child's behavior was a manifestation of the child's disability; or
  - b. Order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.
3. A local educational agency may ask the special education hearing officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others.

**G. Placement during appeals.** (34 CFR 300.533)

1. The child shall remain in the interim alternative educational setting pending the decision of the special education hearing officer, or
2. Until the expiration of the time for the disciplinary period set forth in this section, which ever comes first, unless the parent and the local educational agency agree otherwise.

**H. Protection for children not yet eligible for special education and related services.** (34 CFR 300.534)

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code

- of student conduct of the local educational agency may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:
    - (a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;
    - (b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or
    - (c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.
  3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:
    - (a) The parent of the child has not allowed a previous evaluation of the child or has refused services; or
    - (b) The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.
  4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.
  5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.
    - a. Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.
    - b. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent(s), the local educational agency shall provide special education and related services as required for a child with a disability who is disciplined.
- I. Referral to and action by law enforcement and judicial authorities. (34 CFR 300.535)
1. Nothing in this chapter prohibits a local educational agency from reporting a crime by a child with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.

2. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150).

**J. Information on disciplinary actions. (34 CFR 300.229)**

1. The Virginia Department of Education requires that local educational agencies include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child.
2. Local educational agencies are responsible for transmitting the statement to the Virginia Department of Education upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.
3. The statement may include:
  - a. A description of any behavior engaged in by the child who required disciplinary action;
  - b. A description of the disciplinary action; and
  - c. Any other information that is relevant to the safety of the child and other individuals involved with the child.
4. If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

**SCS Discipline Porcess and Procedures**

- A. **General.** A child with a disability must be entitled to the same due process rights that all children are entitled to under the Code of Virginia and Scott County School's disciplinary policies and procedures.
- B. **Short-term Removals/Sanctions**
  1. A child with a disability may be removed from the child's current educational setting up to 10 cumulative school days in a school year for any violation of school rules to the extent removal would be applied to a child without a disability.
  2. A child with a disability may be removed from the child's current educational setting for a period of time that cumulatively exceeds 10 school days in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the removals do constitute a pattern, the requirements under long-term removals apply.
    - a. Isolated, short-term suspensions for unrelated instances of misconduct may not be considered a pattern.
    - b. These removals do not constitute a change in placement.



**C. Long-term Removals/Expulsions**

1. For purposes of removals of a child with a disability from the child's current educational placement, a change in placement occurs if:
  - a. The removal is for more than 10 consecutive school days; or
  - b. A series of removals constitutes a pattern because the removals cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.
  - c. School personnel are permitted to consider any unique circumstances on a case-by-case basis when deciding whether or not to remove a child with a disability long term from a current educational placement as a result of a violation of the code of conduct.
  - d. Within 10 school days of a decision to change the placement/initiate a long-term removal of a child with a disability due to a violation of the code of conduct, SCS convenes a manifestation determination review (MDR) meeting. During the meeting, the committee reviews all relevant information from the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent, to determine whether or not the child's behavior was a manifestation of the child's disability. A behavior will be considered a manifestation of the child's disability if
    3. The conduct was caused by, or had "direct and substantial relationship" to, the child's disability; or
    4. The conduct was the "direct result" of SCS's failure to implement the child's IEP.
    5. A student may be removed for not more than 45 school days to an interim alternative education setting (IAES) unless the parent agrees to a longer period of time, if the child, while at school, on school premises, or at a school function, inflicts "serious bodily injury" upon another person, regardless of whether or not the behavior is a manifestation of the child's disability.
    6. If the parent disagrees with the placement decision of the IEP Team, the parent(s) may file a grievance with SCS Discipline Committee. The Discipline Committee will convene within 10 administrative days to hear the grievance and a decision will be rendered within 10 administrative days.
    7. If the parent disagrees with the decision of the Discipline Committee, they can appeal to the school board; or
    8. The parent has a right to file a complaint with the DOE and request a Due Process Hearing. If the parent requests a Due Process Hearing, the Director of Special Education will review the procedures of a Due Process Hearing with the parent and provide the necessary paperwork for their convenience.
    9. During an expedited hearing in which a parent disagrees with the determination that that child's behavior was not a manifestation of the child's disability, or with any decision regarding the child's disciplinary placement, the child must remain in the disciplinary placement pending the decision of the hearing officer, or the expiration of the disciplinary removal,



whichever occurs first, unless the parent and SCS agree otherwise.

10. An expedited due process hearing must occur within 20 school days of the date the hearing is requested, and the determination must be issued within 10 school days following the hearing.

11. SCS is not deemed to have had a “basis of knowledge” if:

- (a) The parent has not allowed the child to be evaluated to determine eligibility for special education and related services; and
- (b) The parent has refused to consent for the child’s receipt of special education and related services.

Note: A “basis of knowledge” is no longer triggered when “the behavior or performance of the child demonstrates the need for” special education and related services.

2. Authority of school personnel.

- a. A child with a disability may be removed for any violation of school rules to the extent removal would be applied to children without disabilities.
- b. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not more than 45 school days unless the parent agrees otherwise, if:
  - (1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of SCS or the Virginia Department of Education; or
  - (2) The child knowingly possesses a weapon at school or a school function under the jurisdiction of SCS or the Virginia Department of Education. For purposes of this part, the following definitions apply:
    - (a) Controlled substance means a drug or other substance identified
    - (b) under schedules I, II, III, IV, or V of the Controlled Substances Act.
    - (c) Illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.
    - (d) Weapon has the meaning given the term “dangerous weapon” under 18 USC § 930(g)(2). (34 CFR 530(i)(4))
- c. The interim alternative educational setting must be determined by the IEP Team. The interim alternative educational setting must be selected so as to enable the child to:
  - (1) Continue to progress in the general curriculum, although in another setting.
  - (2) Continue to receive those services and modifications including those described in the child’s current IEP that must enable the child to meet the IEP goals; and

- (3) Include services and modifications that address the behavior and are designed to prevent the behavior from recurring.
  - d. SCS ensures that the following procedures are implemented either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change in placement, including placements in interim alternative educational settings:
    - (1) The IEP Team must convene to determine if a pattern exists. If a pattern exists then a behavioral assessment will be completed on the child and a Behavior Plan put into place.
    - (2) The functional behavioral test may be a review of existing data that can be completed at the IEP Meeting. Parental consent is not necessary to review existing data.
    - (3) The IEP Team must reconvene as soon as practicable after developing the test plan and completing the tests required by the plan. The IEP Team must develop and implement appropriate behavioral interventions to address the behavior.
    - (4) If the child had a behavioral intervention plan before engaging in the behavior, the IEP Team must convene to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior.
  - e. If the child who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year and is subjected to a further removal that does not constitute a change in placement, the IEP Team must review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed in the child's behavioral intervention plan, the IEP Team must meet and modify the plan and its implementation as necessary.
3. Services during periods of disciplinary removal
- a. SCS is not required to provide services during the first 10 school days in a school year that a child with a disability is removed from the child's current educational setting if services are not provided to a child without a disability who has been similarly removed.
  - b. For subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement, SCS must provide services to the extent determined necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the child's IEP.
  - c. The procedures for determining services for periods of removals are as follows:
    - (1) For removals for more than 10 school days in a school year which do not constitute a change in placement, school personnel, in consultation with the child's special education teacher, make the service determinations.
    - (2) For removals that constitute a change in placement, the IEP Team determines what services are needed.

- 4. Manifestation determination**
- a. Manifestation determinations are required if SCS is contemplating a removal that constitutes a change in placement, including removal to an interim alternative educational setting, for a child with a disability who has violated any rule or code of conduct of SCS that applies to all children. SCS must notify the parent or parents of that decision and provide the parent or parents with the procedural safeguards notice no later than the date on which the decision to take the action is made.**
  - b. The IEP Team and other qualified personnel must convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made. The other qualified personnel may include individuals who are knowledgeable about how a child's disability can impact on behavior or on understanding, who understand the impact and consequences of behavior, or who are knowledgeable about the child and the child's disability. The IEP Team and other qualified personnel must review the relationship between the child's disability and the behavior subject to the disciplinary action.**
    - (1) The IEP Team and other qualified personnel may determine the behavior was not a manifestation of the child's disability only if the team and other qualified personnel first consider, in terms of the behavior subject to the disciplinary action, all relevant information, including:**
      - (a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the child;**
      - (b) Observations of the child; and**
      - (c) The child's IEP and placement**
      - (d) Disciplinary History**
      - (e) Reports from Teachers**
      - (f) Medical Records**
      - (g) Previous Residential/Day Treatment**
    - (2) The IEP Team and other qualified personnel must then determine that:**
      - (a) In relationship to the behavior subject to the disciplinary action, the children IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;**
      - (b) The child's disability did not impair the child's ability to understand the impact and consequences of the behavior subject to disciplinary action; and**
      - (c) The child's disability did not impair the child's ability to control the behavior subject to the disciplinary action.**
  - c. If the behavior is a manifestation of the child's disability:**
    - (1) The child can be removed from the child's educational placement only through the IEP process or through placement in an interim alternative educational setting.**
    - (2) The IEP Team must develop or modify strategies, including positive behavioral interventions and supports to address the behavior.**

- d. The review of the IEP Team and other qualified personnel to determine manifestation may be conducted at the same IEP Meeting to develop or review the child's behavioral intervention plan, as long as SCS notified the parent or parents of the purposes of the meeting.
  - e. If the IEP Team and other qualified personnel determine deficiencies in the child's IEP or placement, SCS must take immediate steps to remedy those deficiencies through the IEP process.
  - f. If the IEP Team and other qualified personnel determine that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to a child without a disability may be applied to the child with a disability in the same manner in which the procedures would be applied to a child without a disability.
    - (1) The IEP Team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.
    - (2) Children may not be removed for more than 45 school days to an interim alternative education setting (IAES); unless
    - (3) The parent(s) of the child agree otherwise and document in the minutes of the manifestation review with parent and school approval. Children in Scott County may stay up to 90 days if agreed upon by the parents.
5. Parent appeal
- a. If the child's parent or parents disagree with the determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under these disciplinary procedures, the parent or parents may request an expedited due process hearing.
  - b. SCS is responsible for arranging the expedited due process hearing.
  - c. The hearing will be held within 20 school days from the date the request is filed.
  - d. In reviewing the decision with respect to the manifestation determination, the hearing officer must determine whether SCS has demonstrated that the child's behavior was not a manifestation of the child's disability. The hearing officer will make a determination within 10 school days from the hearing.
  - e. If the parent or parents request a hearing to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period not to exceed 45 school days, unless the parent or parents and SCS agree otherwise.
  - f. If the child is placed in an interim alternative educational setting and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of the due process proceedings, the child must remain in the current placement (the child's placement prior to the interim alternative educational setting).

- g. If school personnel maintain that it is dangerous for the child to be in the current placement (the child's placement prior to the interim alternative educational setting) during the pendency of the due process proceedings, SCS may request an expedited due process hearing.
  - h. A placement ordered by the hearing officer under the procedures for an expedited due process hearing may not be longer than 45 school days. If SCS believes that it is dangerous for the child to return to the current placement, SCS may request the hearing officer to extend the placement for longer than 45 school days.
  - i. If the parent and SCS agree in writing that a resolution has been reached and a copy of their resolution sent to the DOE; then the due process proceedings may be stopped.
6. Protection for children not yet eligible for special education and related services.
- a. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of SCS may assert any of the protections provided if SCS had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
  - b. SCS must be deemed to have knowledge that a child is a child with a disability if:
    - (1) The parent or parents of the child have expressed concern in writing (or orally if the parent or parents do not know how to write or have a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;
    - (2) The parent or parents of the child have requested an evaluation of the child to be determined eligible for special education and related services; or
    - (3) A teacher of the child or school personnel have expressed concern about the behavior or performance of the child to the administrator of special education of SCS or to other personnel in accordance with SCS' child find or special education referral system.
  - c. SCS would not be deemed to have knowledge that a child is a child with a disability if SCS:
    - (1) The parent of the child has not allowed a previous evaluation of the child or has refused services; or
    - (2) Conducted an evaluation and determined that the child was not a child with a disability; or
  - d. If SCS does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.
  - e. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
    - (1) Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

- (2) If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by SCS and information provided by the parent or parents, SCS must provide special education and related services as required for a child with a disability who is disciplined.
7. Expedited due process hearing.
  - a. SCS may request an expedited due process hearing if there is substantial evidence that maintaining the current placement for a child with a disability is substantially likely to result in injury to the child or others.
  - b. The parent or parents may request an expedited due process hearing if the parent or parents disagree with the manifestation determination or any decision regarding placement under this section.
8. Referral to and action by law enforcement and judicial authorities.
  - a. SCS reports a crime by a child with a disability to appropriate authorities to the extent such action applies to a child without a disability.
  - b. In reporting the crime, SCS ensures that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime as prescribed under the Management of Child's Scholastic Record.

### **SCS Timeline for Discipline**

SCS informs all children and parents of discipline procedures yearly as outlined in the Student/Parent Handbook---Code of Conduct. School principals have various disciplinary measures at their disposal. These include: a principal reprimand, extra assignments, assigned duties, suspension from class, suspension of privileges, overnight suspension, parent/teacher conference, in school suspension (1 to 3 days), after school suspension, out of school suspension (up to 10 days), out of school suspension (more than 10 days---right to appeal), court petition, or expulsion. The principal or assistant principal implements discipline procedures in their respective schools.

### **Procedure for Short-term Removal/Sanctions**

1. Determine how many school days, if any, the special education child has been removed from his/her current placement as a result of disciplinary actions this school year.
2. If the proposed sanction results in less than 10 cumulative school days in that school year, proceed to step 3.
3. Provide the child the disciplinary hearing all children are entitled to:
  - A. Meeting with the school's disciplinarian
  - B. Notice of charges/proposed sanction
  - C. Explanation of evidence



- D. Opportunity to tell their side of the story.
- E. Impose appropriate disciplinary sanction

**Procedure for More Than 10 Cumulative School Days or Removals in a School Year/Expulsions**

1. If the proposed disciplinary sanction for a child with a disability exceeds removing that child from his/her current educational placement for more than 10 cumulative school days this school year, SCS must determine if the series of removals constitutes a change in placement.
2. Before exceeding the 10<sup>th</sup> cumulative school day of removal, the school must review the past removals this school year.
3. The school must consider the following (It is recommended that the school seek the input from the special educator and other personnel in considering these factors)
  - A. Length of each removal
  - B. Total amount of time child is removed
  - C. Proximity of removals
  - D. Behavior(s) which result in the removal
4. If it is determined that the cumulative school days of removal do not constitute a change of placement, school personnel (i.e. administrator) must consult with the child's special education teacher to determine the services to be provided starting on the 11<sup>th</sup> school day of removal. Go to Step 6.
5. If it is determined that the cumulative school days of removal constitutes a **CHANGE IN PLACEMENT/WRITTEN NOTICE**, the school:
  - A. The school may immediately impose short term disciplinary sanctions
  - B. Must provide notice of the IEP meeting and procedural safeguards
  - C. Must convene and IEP Team to develop a functional behavioral test plan/review behavior plan
  - D. Provide notice of the IEP Meeting for purpose of making manifestation determination (DIS-3-070101)
  - E. Must convene an IEP Team Meeting within 10 school days
  - F. Must have the IEP Team review all relevant information, based on this review consider:
    - (1) Whether the IEP and placement are appropriate
    - (2) Whether the services/interventions were provided as stated in the IEP
    - (3) Whether the disability impaired the ability to understand impact and consequences of the behavior
    - (4) Whether the disability impaired the ability to control the behavior and his/her ability to follow school rules.
    - (5) Whether the child's disability precludes him/her from having the capacity to determine right from wrong.

**NOTE:** If all 5 factors are met, go to Step I, otherwise go to step G.

- G. If a manifestation is determined, review IEP to determine if services and/or placement need to be modified or changed.

- H. If the IEP Team made changes or refused to incorporate changes requested by the parent or parents, provide prior written notice. Implement the revised IEP.
- I. If no manifestation, provide written notice of proposed action.
- J. If the parent appeals the manifestation determination they may request a disciplinary hearing.
- K. If requested by the parent, schedule disciplinary hearing with appropriate school official under the school's disciplinary procedures (Refer: Scott School System Student Handbook/Code of Conduct Child Suspension/Expulsion and Disciplinary Committee).
- L. Forward the child's special education disciplinary records to the disciplinary hearing authority referenced in Step J.
- M. Disciplinary hearing conducted
- N. If the child is removed by the disciplinary authorization, provide notice of IEP Team meeting.
- O. IEP Team is convened to determine services to be provided during period of suspension.
- P. Provide written notice of proposed/refused actions.
- Q. IEP is implemented.
- 6. Beginning on the 11<sup>th</sup> school day of removal in a school year, educational services must be provided to the extent necessary which must:
  - A. Enable the child to appropriately progress in the general curriculum, and
  - B. Enable the child to appropriately advance toward achieving their IEP goals.
- 7. Impose disciplinary sanction with the services identified in Step 6.
- 8. Within 10 business days of removing the child from more than 10 business days in a given school year, provide notice and convene the IEP Team.
- 9. The IEP Team must either:
  - A. Develop a functional behavioral assessment plan if the child's behavior had not been previously assessed and a behavior plan implemented. GO to Step 10.
  - B. Review the behavior plan, if one already exists, to determine if modifications or revisions are necessary. If so, the IEP must be revised and implemented. Provide notice of the proposed/refused actions.
  - C. Provide prior written notice and obtain informed consent from parents if the functional behavioral test plan calls for tests beyond reviewing existing information. As soon as practicable, tests identified in the plan must be completed.
- 10. An IEP Team meeting needs to be convened to develop appropriate behavior interventions based on the results of the functional behavioral test.
- 11. Provide written notice to parents of proposed/refused actions.
- 12. The revised IEP must be implemented with the behavior interventions.
- 13. Should the child be subject to further removals during this school year, repeat Steps 3 and 4 or 5.
- 14. If it is determined that a change of placement has not occurred, notify IEP Team members to individually review the behavior plan and its implementation, to determine if modifications are necessary.
- 15. If one or more IEP Team members believe modifications are needed to the behavior intervention plan, an IEP Team meeting needs to be noticed and convened.



16. IEP Team determines if modifications to the behavior plan are needed. If so, revise IEP and/or its implementation.
17. Provide notice of proposed/refused action.

**Interim Alternative Educational Settings (IAES) for Children who are in Possession of Dangerous Weapons/Drugs/Controlled Substances/or threaten or do Bodily Harm.**

After the immediate problem is addressed:

1. Law enforcement officers, court services, etc. must be contacted if a child is caught with a controlled substance, in the possession of a weapon or do bodily harm to another child/staff member..
2. If IAES option is chosen, provide notice/convene IEP Team meeting.
3. Scott County School Board has passed a local policy for Children who are in Possession of Dangerous Weapons/Drugs/Controlled Substances/or threaten or do Bodily Harm. This policy states that a child who commits any of the preceding offences must spend 90 administrative days in the Alternative Education Program due to the seriousness of the offense. However, parents of children with disabilities are given the option between 45 administrative days and 90 administrative days in Alternative Education because of the letter of the law.
4. SCS protects the student's right to a FAPE while being disciplined by:
  - A. Monitoring the student's progress in the general curriculum
  - B. Offering a continuation of the IEP services
  - C. Offering services and modifications to address the behavior designed to prevent the behavior from recurring must be considered. These services must:
    - (1) Examining those services which would assist the child's chances of becoming a productive and law-abiding member of society
    - (2) Ensuring that the child does not fall behind in course work; and
    - (3) Offering the opportunity for the child to acquire skills necessary to modify behavior upon return to school
  - D. Providing written notice of proposed/refused actions.
  - E. Implementing IAES.
5. Process after IAES expires:
  - F. At the expiration of the IAES, child returns to previous placement unless IEP is revised by IEP Team, or Hearing Officer/Court, upon a proper finding of dangerous, orders alternative program.
  - G. Provide notice and convene IEP Team within 10 business days to develop a functional behavioral test plan or review the behavioral plan.
  - H. Provide notice and convene IEP Team within 10 business days to determine manifestation.
  - I. If safety remains a concern of the school personnel after the 45 administrative days, SCS may seek an expedited hearing to obtain additional days based upon alleged danger, unless the parent and SCS agree otherwise through the IEP process, or a court order extends IAES.
  - J. SCS may request such hearings as many times as deemed necessary.

- K. A manifestation determination is required; however, the “behavior-to-disability” link is not required for IAES determination.
- L. If the safety of children and staff is involved, SCS has the right to remove the child immediately to IAES for up to 10 business days after consultation with the special education teacher.
- M. Immediately or within 10 business days of the decision date, school personnel must convene an IEP Team and other qualified personnel for review of the child’s behavior intervention plan.
- N. If the child does not have a behavior intervention plan one must be developed after conducting a functional behavioral test, determine manifestation, and determine IAES.

#### **Local Appeal Process for Suspensions in Excess of Ten (10) School Days for Children with a Disability**

In any case in which a child has been suspended by the disciplinarian of the school, the child and his/her parent or parents may appeal the decision to the Superintendent or his designee. Nothing in this part excludes a parent’s or parents’ right to a due process hearing. The following procedures are to be followed.

1. The appeal must be in writing and must be filed with the superintendent or his designee within seven (7) calendar days of the suspension decision.
2. Failure to file a written request within the specified time must constitute a waiver of the right to a hearing before the Disciplinary Committee.
3. The Superintendent or his designee has 10 school days to review the recommended suspension or expulsion and respond to the appeal in writing to the parent or parents.
4. If the parent or parents disagree with the decision of the superintendent or his designee, they have seven (7) calendar days to appeal his decision to SCS Disciplinary Committee. The superintendent or his designee must notify the child and his/her parent or parents of the time and place of the hearing.
5. The Disciplinary Committee must follow the hearing procedure set forth under Expulsions in the Child/Parent Handbook---Code of Conduct given to children and parents each year.
6. The Disciplinary Committee must convene a disciplinary hearing within 30 calendar days to review the appeal and hear the evidence as presented by school personnel and by the child.
7. The Disciplinary Committee may, by majority vote, uphold, reject or alter the recommendations.
8. Following the decision of the Disciplinary Committee or upon expiration of the appeal period, the child’s parent or parents must be provided with written notice of the decision of the Disciplinary Committee. A certified letter must be forwarded to the parents.
9. The child or his/her parent or parents may appeal the committee’s decision to the full School Board only if the decision of the Disciplinary Committee is not unanimous. Otherwise the decision of the Disciplinary Committee is final.

10. The appeal to the full School Board must be in writing and must be filed with the superintendent within five (5) calendar days from receipt of the certified letter.
11. A copy of all evidence and decisions must be kept on file for five years after the child either graduates or leaves school.

#### In-School Suspension (ISS)

ISS would not count in the days of suspension as long as the child:

1. Is afforded the opportunity to continue to appropriately progress in the general curriculum;
2. Continues to receive the special education and/or related services specified in the child's IEP; and
3. Continues to participate with nondisabled children to the extent the child would have in the current placement

#### Other Guiding Procedures Pertaining to the Discipline of Students with Disabilities

1. Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement.
2. If alternative arrangements are not made for the child with a disability who has been suspended from the bus to receive educational services, then that bus suspension would count in the number of removal days.
3. SCS should consider whether the behavior on the bus should be addressed in the child's IEP.
4. Suspensions may not interfere with a child's right to a free appropriate public education.
5. If a child is removed from school more than 10 school days and no change in placement is determined, the school's disciplinarian and the child's special education teacher must determine the extent to which services are necessary for the child to:
  - A. Appropriately progress in the general curriculum; and
  - B. Appropriately advance toward achieving the goals set out in the child's IEP.
6. Home-based instruction may be an alternative educational setting where services are delivered in the home setting for either short-term or long-term removal.
7. A change in placement or removal for more than 10 school days in a school year requires the development of a functional behavioral assessment (FBA) or review of a behavior intervention plan (BIP).
8. A change on placement requires a manifestation review.
9. If there is a disagreement to the findings in the manifestation review, the parent has
10. An expedited due process hearing may be requested to resolve any dispute relative to special education disciplinary situations involving a change in placement or manifestation determination (e.g., the child with a disability is

removed for more than 10 consecutive school days or a pattern exists for cumulative removals).

11. No later than the decision date in which school personnel contemplate that there must be a long-term suspension, notice of this decision and procedural safeguards must be provided the parents.
12. Mediation is also available to the parent and SCS to resolve discipline disputes.

### **Behavioral Goals**

Students with disabilities may have behavioral goals in the IEP that are not part of a FBA/BIP. Students do not have to receive 10 days of OSS prior to writing behavioral goals as a preventative measure to head off more aggressive behaviors or behaviors that may be interfering with learning of the student with disabilities or other students. Prevention measures may include placement at the Alternative School for a short period of time not to exceed 10 days. Prevention measures would not be recognized as a discipline placement.

### **Functional Behavioral Test (FBA) ---Behavioral Intervention Plan (BIP)**

1. A functional behavioral assessment (FBA) is completed, and a behavioral intervention plan (BIP) developed if necessary, because a child's behavior is impeding the child's learning or that of others; or if a child's behavior is determined to be a manifestation of the child's disability. 300.530
2. Upon receiving 10 days out-of-school suspension (OSS), the IEP Team determines based on the above information if a FBA or BIP is necessary, and if so, develops the scope and extent of the functional behavioral assessment, or review of the behavioral intervention plan (BIP) if one exists.
3. As soon as practicable, after developing and completing the FBA, the IEP team must develop a behavior plan and implement the interventions.
4. If the child has a BIP, the IEP Team must review the plan and its implementation and modify it, as necessary, to address the behavior.
5. In the event that the child has any behavior that is affecting learning, but the IEP Team finds that these behaviors are not related to the child's disability, a statement to this effect must be included in the IEPs behavioral component addressing positive intervention strategies and supports.
6. If the FBA must involve an evaluation before review of existing information, then parental consent needs to be obtained. In other cases, the FBA may simply be a review of existing data, in which consent is not required. (e.g., a review of strategies, interventions, and supports already built into the IEP).
7. The BIP must be reviewed by the IEP Team when change of placement occurs
8. Short-term suspensions amounting to more than 10 cumulative school days of removal not equating to a pattern do not require a BIP or change in placement; however, the principal and the special education teacher must determine how the child must be allowed to complete his/her work in order to continue a free appropriate public education.

9. The BIP must be accessible to each regular education teacher, special education teachers, related service providers, and other service providers who are responsible for the BIPs implementation.
  - A. Each teacher and provider must be informed of his/her specific responsibilities related to implementing the child's BIP, and,
  - B. Any specific accommodations, modifications, and supports identified in the child's BIP.
10. SCS is deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:
  - A. The child's parent expressed concern in writing to supervisory or administrative personnel, or a teacher of the child, that the child is in need of special education and related services;
  - B. The child's parent requested an evaluation of the child; or
  - C. The teacher of the child, or other SCS personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of SCS or to other supervisory personnel of SCS. 300.534(b)

## **POLICY ON PHYSICAL RESTRAINT AND SECLUSION**

School personnel may implement physical restraint or seclusion only when other interventions are, or would be, in the reasonable judgment of the school personnel implementing physical restraint or seclusion in an emergency situation, ineffective and only to:

1. Prevent a student from inflicting serious physical harm or injury to self or others;
2. Quell a disturbance;
3. Remove a student from the scene of a disturbance in which the student's behavior or damage to property threatens serious physical harm or injury to persons;
4. Defend self or others from serious physical harm or injury; or
5. Obtain possession of controlled substances or paraphernalia or weapons or other dangerous objects that are upon the person of the student or within the student's control.

Physical restraint and seclusion shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.

Nothing in this policy shall be construed to require school personnel to attempt to implement a less restrictive intervention before using physical restraint or seclusion where, in the reasonable judgment of the school personnel in an emergency situation, a less restrictive intervention would be ineffective.

The School Board encourages the use of positive behavioral interventions and

**supports to reduce and prevent the need for the use of physical restraint and seclusion.**

**The superintendent is responsible for developing procedures to address the requirements of the Virginia Board of Education Regulations regarding physical restraint and seclusion in public schools.**

**The School Board will review this policy at least annually and update it as needed.**

## **1. Glossary of terms**

For the purposes of these Procedures, the following terms and definitions are provided.

**Aversive stimuli** means interventions that are intended to induce pain or discomfort to a student for purposes of punishing the student or eliminating or reducing maladaptive behaviors, such as:

1. Noxious odors and tastes;
2. Water and other mists or sprays;
3. Blasts of air;
4. Corporal punishment as defined in Va. Code § 22.1-279.1;
5. Verbal and mental abuse;
6. Forced exercise, when:
  - a. The student's behavior is related to the student's disability;
  - b. The exercise would have a harmful effect on the student's health; or
  - c. The student's disability prevents participation in such activities.
7. Deprivation of necessities, including:
  - a. Food and liquid at a time it is customarily served;
  - b. Medication; or
  - c. Use of a restroom.

**Behavioral Intervention Plan** or **BIP** is a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of a student, the learning of others, or that require disciplinary action.

**Business day** means Monday through Friday, 12 months of the year. It does not include federal and state holidays.

**Calendar days** means consecutive days, including Saturdays and Sundays. Whenever an action expires on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action is extended to the next day that is not a Saturday, Sunday, or a federal or state holiday.

**Child with a disability** or **student with a disability** means a student who is eligible under the Individuals with Disabilities Education Act (IDEA)<sup>1</sup> or Section 504 of the Rehabilitation Act (Section 504).<sup>2</sup>

**Corporal punishment** means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline. (A full definition can be found in Appendix E.)

**Crisis Intervention Program** refers to a formal training program designed to teach school personnel how to effectively manage a potentially negative or even dangerous situation with students. Examples of crisis intervention programs include, but are not limited to, The Mandt System, Nonviolent Crisis Intervention, Safety-Care Behavioral Safety Training, and Handle With Care Behavior Management System.

**Day** means a calendar day unless otherwise designated as a business day or school day.

**Evaluation** means procedures used in accordance with the IDEA (or Section 504) to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

**Functional Behavioral Assessment** or **FBA** is a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment can include a review of existing data or new testing data or evaluation.

**Individualized education program** or **IEP** means a written statement for a child with a disability that is developed, reviewed, and revised at least annually in a team meeting in accordance with the IDEA. 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.

**Individualized education program team** or **IEP team** means a group of individuals described in the Virginia special education regulations (at 8 VAC 20-81-110) that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

**Mechanical Restraint** means the use of any material, device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related service professional and are used with parental consent and for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
2. Vehicle restraints, including seat belts, when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization;
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or

5. High-chairs and feeding stations used for age and/or developmentally appropriate students.

**Pharmacological restraint** means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (i) prescribed by a licensed physician or other qualified health professional under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition and (ii) administered as prescribed by a licensed physician or other qualified health professional acting under the scope of the professional's authority.

**Physical Restraint** means a personal restriction that immobilizes or reduces the ability of a student to move freely. Physical restraint does *not* include:

1. Briefly holding a student in order to calm or comfort the student;
2. Holding a student's hand or arm to escort the student safely from one area to another; or
3. The use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control.

**Restraint** means mechanical restraint, physical restraint, or pharmacological restraint.

**School day** means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

**School personnel** means individual(s) employed by the school division on a full-time or part-time basis or as independent contractors or subcontractors as instructional, administrative, and support personnel, and includes individuals serving as a student teacher or intern under the supervision of appropriate school personnel.

**Seclusion** is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided that no such room or space is locked, the term "seclusion" does *not* include the following activities:

1. In-school suspension;
2. Detention;
3. Time-out;
4. Student-requested breaks in a different location in the room or a separate room;
5. Removal of a student for a short period of time to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which the student is not physically prevented from leaving;
6. Removal of a student for disruptive behavior from a classroom by the teacher as provided in Va. Code § 22.1-276.2; or
7. Confinement of a student alone in a room or area from which the student is physically prevented from leaving during an investigation and questioning by school personnel regarding the student's knowledge of or participation in



events constituting a violation of the code of student conduct (e.g., physical altercation, or an incident involving drugs or weapons).

**Section 504 Plan** means a written plan of modifications and/or accommodations for qualified individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

**Student** means any student, with or without a disability, enrolled in a Virginia public school (as defined by Va. Code § 22.1-1). It also includes those students who are:

1. Attending a public school on a less-than-full-time basis, such as those students identified in Va. Code § 22.1-253.13:2.N;
2. Receiving homebound instruction pursuant to 8 VAC 20-131-180 and as defined in 8 VAC 20-81-10 without regard to special education eligibility;
3. Receiving home-based instruction pursuant to 8 VAC 20-81-10; and
4. Attending a pre-school program operated by the school division or receiving services in a pre-school program from school division personnel.

Under these procedures, a student does not include those children who are:

1. Enrolled in private, denominational, or parochial schools;
2. Receiving instruction by a tutor or teacher of qualifications approved by the division superintendent;
3. Receiving home instruction pursuant to Va. Code § 22.1-254; and
4. Receiving instruction in a secured facility or detention home as defined in Va. Code § 16.1-288 or in a facility operated by the Virginia Department of Behavioral Health and Developmental Services.

**Time-out** means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined. In some instances, the student may self-select this procedure. Time-out is *not* seclusion.

## **2. Application of the physical restraint and seclusion procedures.**

These procedures govern the use of physical restraint and seclusion by school personnel. If an action does not constitute restraint or seclusion, as those terms are defined herein, then school personnel may act within their reasonable discretion. If the action falls within the definitions of restraint or seclusion, it may be used, but only

under the circumstances described in these procedures.

These procedures apply to all students attending school in the school division and all school personnel. Some students with disabilities are placed in private schools by the school division as a means of providing a free appropriate public education (FAPE). These restraint and seclusion procedures do not apply to such private school students. With regard to restraint and seclusion, those students are afforded the protections set forth in the Regulations Governing the Operation of Private Schools for Students with Disabilities.

### **3. Positive behavioral interventions and support strategies.**

Scott County Public Schools (SCPS) encourages the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion. The following are some examples of positive behavior interventions and support strategies to consider:

- Implementing a comprehensive behavioral system, such as PBIS,<sup>4</sup> to create a school-wide environment that reinforces appropriate behaviors while reducing instances of dangerous behaviors that may lead to the need to use restraint or seclusion. SCPS' administration has received training in this program and intends to implement in the school year 2021-2022. The COVID Pandemic prevented implementation for the school year 2020-2021. Key elements of a school-wide system or framework include (1) universal screening to identify children at risk for behavioral problems; (2) use of a continuum of increasingly intensive behavioral and academic interventions for children identified as being at risk; (3) an emphasis on teaching and acknowledging school-wide and individual expected behaviors and social skills; and (4) systems to monitor the responsiveness of individual children to behavioral and academic interventions.
- SCPS' school staff have received training in the use of preventive assessments (e.g., FBAs) to identify where, under what conditions, with whom, and why specific inappropriate behavior may occur, as well as implementing de-escalation techniques to defuse potentially violent dangerous behavior. Preventive assessments can include (1) a review of existing records; (2) interviews with parents, family members, school staff, and/or students; and (3) examination of previous and existing behavioral intervention plans. Using data from such assessments could help schools identify the conditions when inappropriate behavior is likely to occur and the factors that lead to the occurrence of these behaviors; and develop and implement preventive behavioral interventions that teach appropriate behavior and modify the environmental factors that escalate the inappropriate behavior.
- Having planned behavioral strategies or plans (e.g., BIPs) in place to: (1) attempt to de-escalate potentially violent dangerous behavior; (2) identify and support positive behavior to replace dangerous behavior; and (3) support and positively reinforce appropriate behavior in class and/or throughout the school, especially if a student has a history of escalating dangerous behavior.

Any behavioral intervention used by school personnel should be consistent with a student's rights to be treated with dignity and to be free from abuse.

#### **4. Prohibited actions by school personnel.**

The following actions are *not* permitted:

1. Use of mechanical restraints;
2. Use of pharmacological restraints;
3. Use of aversive stimuli;
4. Use of corporal punishment;
5. Use of restraint or seclusion under the following circumstances:
  - a. In any manner that restricts a student's breathing or harms the student.  
For example:
    - i. Prone (i.e., lying face down) restraints or other restraints that can restrict breathing or speaking should not be used;
    - ii. Other maneuvers that place pressure or weight on the chest, lungs, sternum, diaphragm, back, neck, or throat should not be used;
    - iii. Breathing or speaking can also be restricted if loose clothing becomes entangled or tightened or if the student's face is covered by a staff member's body part (e.g., hand, arm, or torso) and, thus, such techniques should not be used.
  - b. As punishment or discipline (e.g., disrespect, noncompliance, insubordination, out-of-seat behavior, etc.);
  - c. As a means of coercion or retaliation;
  - d. As a convenience;
  - e. To solely prevent property damage;
  - f. In any other manner not consistent with these procedures; or
  - g. When medically or psychologically contraindicated as documented by an IEP team, 504 team, school professionals, a licensed physician, psychologist, or other qualified health professional under the scope of the professional's authority.
6. Use of seclusion rooms or freestanding units not meeting the standards set forth in § 5.1 of these procedures.

#### **5. Permitted actions by school personnel.**

School personnel may implement physical restraint or seclusion only when other interventions are, or would be, in the reasonable judgment of the school personnel implementing physical restraint or seclusion in an emergency situation, ineffective and only to:

1. Prevent a student from inflicting serious physical harm or injury to self or others;
2. Quell a disturbance;
3. Remove a student from the scene of a disturbance in which the student's behavior or damage to property threatens serious physical harm or injury to persons;
4. Defend self or others from serious physical harm or injury; or

5. Obtain possession of controlled substances or paraphernalia or weapons or other dangerous objects that are upon the person of the student or within the student's control.

The specific technique used should be safe for the student and appropriate to the student's age, disability, and medical needs.

A less restrictive intervention does not have to be attempted prior to using physical restraint and seclusion when, in the reasonable judgment of the school personnel in an emergency situation, a less restrictive intervention would be ineffective.

Property damage alone does not justify the use of physical restraint or seclusion. But physical restraint or seclusion might be justified in an emergency situation when a student's damage to property creates an imminent risk of serious physical harm or injury to the student or others.

If physical restraint is used upon a student whose primary mode of communication is sign language or an augmentative mode, the student should be permitted to have a hand(s) free of restraint for a brief period of time, unless staff determines that such freedom appears to likely result in harm to the student or others.

Physical restraint and seclusion must be used only for limited periods of time using only the force that is necessary and should cease immediately when the emergency situation has dissipated. An alternative plan should be in place in the event that the student does not begin to calm down within a reasonable time period, usually just a few minutes.

The student should be continuously and visually observed and monitored while he or she is restrained or placed in seclusion. Those observing the application of a restraint should confirm that the restraint does not cause harm to the student, such as restricting the student's breathing. Continuous visual monitoring of restraint or seclusion includes, for example: (1) continuous assessment of staff and student status, including potential physical injuries; (2) termination of restraint or seclusion when imminent danger of serious physical harm to self or others has dissipated; (3) evaluation of how procedures are being implemented; and (4) consideration of opportunities for redirection and defusing the dangerous behavior.

□ *Exception to the visual monitoring requirement:* Visual monitoring is not required during an emergency situation if securing someone to perform visual monitoring before implementing the physical restraint or seclusion would, in the reasonable judgment of the school employee, result in serious physical harm or injury to persons.

Staff trained in the use of cardiopulmonary resuscitation (CPR) and First Aid should be available in the event of an emergency related to the use of physical restraint or seclusion. A portable automatic electronic defibrillator (AED) should also be available in the school.

Following the use of physical restraint or seclusion:

- ☐ School health clinic personnel should promptly assess the student;
- ☐ The school principal or designee should be notified of the incident and any related first-aid as soon as possible and no later than the end of the school day;
- ☐ Reasonable efforts should be made to notify the student's parent of the incident and any related first-aid on the same school day;
- ☐ An incident report (see appendix) should be completed and submitted to the school principal within two (2) school days and sent to the parent within seven (7) calendar days; and
- ☐ A debriefing should occur with everyone involved within two (2) school days.

See 6 and 7 for more detailed information regarding notification, reporting, and debriefing requirements

See 8 for a discussion of the required meetings following multiple uses of physical restraint or seclusion in a school year regarding a specific student.

## **5.1 Structural and physical standards for rooms and areas used for seclusion.**

Any seclusion room or area, if used, should meet the following specifications:

1. Be safe and free of any potential or predictable safety hazards;
2. Be of reasonable size permitting students to lie or sit down or stand;
3. Have adequate ventilation including heat and air conditioning as appropriate;
4. Have adequate lighting;
5. All space in the room or area shall be visible through the door, either directly or by mirrors;
6. Provide for direct continuous visual and auditory monitoring of the student either by the presence of school personnel in the seclusion room or area or observation through a window, viewing panel, or half-door;
7. Windows shall be constructed to minimize breakage;
8. Permit automatic release of any locking device if fire or other emergency in the school exists; and
9. Be inspected at least annually, including by fire or safety inspectors.

In addition to the above requirements, the appropriate use and duration of seclusion should be based upon the age and development of the student.

## **6. Notification and reporting requirements following use of physical restraint or seclusion.**

Whenever a student has been physically restrained or secluded, the school principal and the student's parent(s) must be promptly notified and a written incident report must be completed.

**6.1 Each incident of restraint and seclusion must be reported to the school principal and the student's parent on the day of the occurrence whenever possible.**

1. *Report to school principal:* School personnel involved shall report the incident and the use of any related first aid to the school principal or the principal's designee as soon as possible and in no instance later than the end of the school day in which the incident occurred.

2. *Notice to parent:* The school principal or the principal's designee, or other school personnel, shall make a reasonable effort to contact the student's parent, either in person, through telephone conversation, or other means of communication authorized by the parent such as email, to notify the parent of the incident and any related first aid administered to the student on the day the incident occurred.

a. Staff should document the parent contact and indicate the type of contact (phone, email, in-person, etc.) and content of the interaction. If the physical restraint or seclusion occurred after the regular school day, the above notifications shall be made as soon as practicable in compliance with the school division's school crisis, emergency management, and medical emergency response plan required by Va. Code § 22.1-279.8.

**6.2 Following each instance of physical restraint or seclusion, school staff must complete an incident report.**

1. *Within two school days* of the incident: school personnel involved in the incident or other school personnel, as may be designated by the principal, should complete and provide to the principal (or designee) a written incident report.

2. *Within seven calendar days* of the incident: the school division should provide the parent with a copy of the written incident report.

The written incident report should contain the following information:

1. Student name, age, gender, grade, and ethnicity;
2. Location of the incident;
3. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;
4. Date of report;
5. Name of person completing the report;
6. School personnel involved in the incident, their roles in the use of physical restraint or seclusion, and documentation of their completion of the division's

training program;

7. Description of the incident, including the resolution and process of return of the student to the student's educational setting, if appropriate;
8. Detailed description of the physical restraint or seclusion method used;
9. Student behavior that justified the use of physical restraint or seclusion;
10. Description of prior events and circumstances prompting the student's behavior, to the extent known;
11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed;
12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;
13. If a student, school personnel, or any other individual sustained bodily injury, the date and time of nurse or emergency response personnel notification and the treatment administered, if any;
14. Date, time, and method of parental notification of the incident; and
15. Date, time, and method of school personnel debriefing.

## **7. Staff and student debriefing.**

Following each incident of physical restraint or seclusion, the school principal must promptly review the incident with school personnel and, if appropriate, the student. *Within two school days*, the principal (or designee) must review the incident with all school personnel who implemented the use of physical restraint or seclusion to discuss:

1. Whether the use of restraint or seclusion was implemented in compliance with these procedures; and
2. How to possibly prevent or reduce the future need for physical restraint or seclusion.

*Within two school days or upon the student's return to school*, as appropriate, depending on the student's age and developmental level, the principal (or designee) should review the incident with the student involved to discuss:

1. Details of the incident to assist the student and school personnel in identifying patterns of behaviors, triggers, or antecedents; and
2. Alternative positive behaviors or coping skills the student could use to reduce behaviors or prevent physical restraint or seclusion.

## **8. Prevention/multiple uses of restraint or seclusion.**

The use of physical restraint or seclusion, particularly when there is repeated use for an individual student, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, development or revision of behavioral strategies.

### **8.1 Required meetings for students who have an IEP or a 504 Plan.**

In the *initial development and subsequent review and revision* of a student's IEP or Section 504 Plan, the student's IEP or Section 504 team shall consider whether the student displays behaviors that are likely to result in the use of physical restraint or seclusion. If the IEP or Section 504 team determines that future use is likely, the team shall consider, among other things, the need for:

1. An FBA;
2. A new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions;
3. Any new or revised behavioral goals; and
4. Any additional evaluations or reevaluations.

*Within 10 school days following the second school day in a single school year on which an incident of physical restraint or seclusion has occurred*, the student's IEP or Section 504 team shall meet to discuss the incident and to consider, among other things, the need for:

1. An FBA;
2. A new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions;
3. Any new or revised behavioral goals; and
4. Any additional evaluations or reevaluations.

## **8.2 Required meeting for general education students.**

*Within 10 school days of the second school day in a single school year on which an incident of physical restraint or seclusion has occurred*, a team consisting of the following individuals will meet to discuss the incident:

1. The parent;
2. The principal (or designee);
3. A teacher of the student;
4. School personnel involved in the incident (if not the teacher or administrator already invited); and
5. Other appropriate school personnel, such as a school psychologist, school counselor, or school resource officer, as determined by the school division.

During the meeting, the team should discuss the incident and consider, among other things, the need for:

1. An FBA;
2. A new or revised BIP that addresses the underlying causes or purposes of the



behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; and

3. A referral for evaluation under the IDEA and/or Section 504 if the team suspects a disability.

Nothing in this section shall be construed to (i) excuse the team or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than two incidents of physical restraint or seclusion in a single school year.

### **8.3 The school principal should regularly review incidents of restraint and seclusion to ensure that school staff are complying with the school division's procedures.**

In addition to the above-required team meetings, the principal (or designee) should regularly review the use of physical restraint or seclusion within the school building to ensure compliance with school division policy and procedures.

When there are multiple incidents of physical restraint or seclusion within the same classroom or by the same individual, the principal should take appropriate steps to address the frequency of use, such as conducting additional training for school staff, convening IEP and Section 504 team meetings, and completion of the FBA and BIP process, etc.

## **9. Investigation of complaints.**

Any incident of physical restraint or seclusion that results in a complaint from a parent/guardian or a reported injury to a student or staff should be investigated pursuant to applicable school board policies.

Refer to Scott County Policy Manual File:JB – Equal Educational Opportunities/Nondiscrimination and File: JB-F/GB-F; JFHA-F/GBA-F Report of Discrimination/Harassment

## **10. Training and staff development.**

There are two levels of required training on the use of physical restraint and seclusion: initial and advanced. All school personnel, as defined herein, must complete the initial training. Select school personnel must complete the advanced training.

### **10.1 Initial Training**

All school division personnel should receive initial training on:

1. Skills related to positive behavior support;
2. Conflict prevention;
3. De-escalation;
4. Crisis response (to include follow-up support and social-emotional strategy support for students, staff, and families); and
5. Regulations, policies, and procedures regarding physical restraint and seclusion.

The initial training should be evidence-based.

The Virginia Department of Education (VDOE), in partnership with Old Dominion University (ODU), has developed a series of modules to provide professional development to Virginia school personnel on physical restraint and seclusion. These free, on demand, online modules fulfill the first level of training requirements. The series of modules can be found on the ODU-VDOE joint webpage at <https://www.odu.edu/eps/programs/ciees/initiatives/restraint-and-seclusion.html>.

Attendance at each training session should be documented and such documentation should be maintained.

## 10.2 Advanced Training

In addition to completing the initial training, the following individuals must complete advanced training on physical restraint and seclusion:

1. At least one administrator in every school building; and
2. Personnel assigned to work with any student whose IEP or Section 504 team determines that the student is likely to be physically restrained or secluded.

The advanced training should be evidence-based. The specific content of the advanced training is usually prescribed by the specific crisis intervention program selected by the school division. Such training may include the following elements:

- Certification in a recognized behavior management system that
- Regular updates for training and recertification;
- Education in the use of positive, instructional, and preventative methods for addressing student behavior;
- Instruction in de-escalation strategies and conflict management;
- Identifiable conditions under which physical restraint and seclusion are allowed;
- Procedures to be followed when physical restraint and seclusion are implemented;
- Education about the potential harm of using restraint and seclusion;
- Methods for monitoring a student's well-being when using restraint and seclusion; and

- Instruction regarding incident documentation and reporting requirements, and the procedures for investigating injuries and complaints.

Attendance at each training session should be documented and such documentation should be maintained.

## **11. Annual review of the procedures.**

The school division must review these physical restraint and seclusion procedures at least *annually* and update them as appropriate.

As part of the annual review process, the school division should consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

## **12. Annual reporting requirements.**

The division's school principals and superintendent must annually prepare and file the following reports:

### **School Principal's (or Designee) Annual Report**

- Each school principal or the principal's designee shall submit to the division superintendent each year a report on the use of physical restraint or seclusion in the school.
- This report should be based on the incident reports completed by school personnel following each occurrence of physical restraint or seclusion.

### **Division Superintendent's Annual Report**

- The division superintendent shall annually report the frequency of incidents of physical restraint and seclusion in the school division to the state superintendent of public instruction (on a form that is supposed to be provided by the VDOE).
- This information should also be made available to the public.

### **13. Publicly-placed private school students.**

Some students with disabilities are placed in private schools by the school division as a means of providing a free appropriate public education (FAPE). These restraint and seclusion procedures do not apply to such private school students. With regard to restraint and seclusion, those students are afforded the protections set forth in the Regulations Governing the Operation of Private Schools for Students with Disabilities.

If there is reason to believe that a private school is improperly using restraint or seclusion or applying it in a discriminatory manner regarding a division-placed student, the school division should investigate. If there is reason to believe that a private school's use of restraint or seclusion is interfering with a student's provision of FAPE, an IEP meeting should be held to review and, if necessary, develop or revise behavioral strategies and supports, and/or consider other changes to the student's educational program.

### **14. Construction and interpretation of these procedures.**

Nothing in these procedures shall be construed to modify or restrict:

- The initial authority of teachers to remove students from a classroom pursuant to § 22.1-276.2 of the Code of Virginia;
- The authority and duties of school resource officers and school security officers, as defined in § 9.1-101 of the Code of Virginia, except to the extent governed by a memorandum of understanding between the local law enforcement agency and the school division;<sup>7</sup>
- The authority of the Virginia Department of Juvenile Justice with regard to students in its custody at any of its sites or in any of its programs; or
- The civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care, or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care, or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct, as provided in § 8.01-220.1:2 of the Code of Virginia.

A copy of these procedures must be available to employees and the public.

- A current copy of the procedures must be posted on the school division's website;
- Printed copies should be available as needed for citizens who do not have

online access.

The school division welcomes parent input into the school division's use of physical restraint and seclusion.

## **15. Resources regarding restraint and seclusion.**

Va. Code Ann. § 22.1-279.1, Corporal Punishment Prohibited,  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-279.1>.

Va. Code Ann. § 22.1-279.1:1, The use of seclusion and restraint in public schools,  
<https://law.lis.virginia.gov/vacode/title22.1/chapter14/section22.1-279.1:1/>

8 VAC 20-750-5 *et seq.*, Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools,  
<http://register.dls.virginia.gov/details.aspx?id=8093>

Superintendent's Memo #192-20 (July 24, 2020), *Regulations Governing the Use of Restraint and Seclusion in Elementary and Secondary Schools in Virginia*  
[http://www.doe.virginia.gov/administrators/superintendents\\_memos/2020/index.shtml](http://www.doe.virginia.gov/administrators/superintendents_memos/2020/index.shtml).

Virginia Department of Education, *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors In Emergency Situations in Virginia Public Schools* (September 2009),  
[http://www.doe.virginia.gov/support/student\\_conduct/guidelines\\_managing\\_behaviors\\_emergency.pdf](http://www.doe.virginia.gov/support/student_conduct/guidelines_managing_behaviors_emergency.pdf).

U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 2012),  
<http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

School Board Policy on Physical Restraint and Seclusion

## PROCEDURAL SAFEGUARDS

### 8 VAC 20-81-170

The following procedures must be adhered to in order to ensure that all children who are disabled and in need of special education and/or related services are identified, located and evaluated.

#### Procedural Safeguards Process and Procedures

##### **A. Opportunity to Examine Records; Parent Participation** (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. SCS will maintain and implement the following safeguards as follows:
  - a. The parent or parents of a child with a disability are afforded an opportunity to:
    - (1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.
    - (2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.
  - b. Parent participation in meetings
    - (1) SCS will provide notice to ensure that the parent or parents of a child with a disability has the opportunity to participate in meetings including notifying the parent or parents of the meeting early enough to ensure that they must have an opportunity to participate. The notice will:
      - (a) Indicate the purpose, date, time, and location of the meeting and who must be in attendance;
      - (b) Inform the parent or parents that at their discretion or at the discretion of SCS, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child, and
      - (c) Inform the parent of the determination of the knowledge or special expertise must be made by the party who invited the individual.
      - (d) Inform the parent, in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

- (3) A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that the school's personnel engage in to develop a proposal or a response to a parent proposal that must be discussed at a later meeting.
- c. Parent involvement in placement decisions.
  - (1) The SCS will ensure that a parent(s) of each child with a disability is a member of the IEP team that makes decision on the educational placement of their child;
  - (2) In implementing the requirements of subdivision 1 c (1) of this subsection, SCS will provide notice in accordance with the requirements of 8VAC20-81-110 E.
  - (2) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, SCS will use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing;
  - (3) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent or parents, if SCS is unable to obtain the parent's or parents' participation in the decision. In this case, SCS will have a record of its attempt to ensure the parent's or parents' involvement.
  - (4) SCS takes whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.
  - (6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 a. (34 CFR 300.530(f)(2) and (g))

**B. Independent Educational Evaluation.**

**1. General. (34 CFR 300.502(a))**

- a. The parent or parents of a child with a disability has the right to obtain an independent educational evaluation (IEE) of the child.
  - b. SCS will provide to the parent or parents of a child with a disability, upon request, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.
- 2. Parental right to evaluation at public expense.**
- a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation obtained by SCS.

- b. If the parent or parents request an IEE at public expense, SCS will, without unnecessary delay, either:
    - (1) Initiate a due process hearing to show that its evaluation is appropriate; or
    - (2) Ensure that an IEE is provided at public expense, unless SCS demonstrates in a hearing that the evaluation obtained by the parent or parents does not meet SCS criteria.
  - c. If the LEA initiates a hearing and the final decision is that SCS's evaluation is appropriate, the parent or parents still have the right to an independent educational evaluation, but not at public expense.
  - d. If the parent or parents request an independent educational evaluation, SCS will ask the reasons for the parent's or parents' objection to the public evaluation. However, the explanation by the parent or parents may not be required and SCS will not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation.
  - e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation -----with which the parent disagrees.
  - f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that SCS uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, SCS may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with SCS an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))
- a. Shall be considered by SCS, if it meets SCS criteria, in any decision regarding the provision of a free appropriate public education to the child; and
  - b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.
4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation -----, as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d))

**C. Prior Written Notice; Content of Notice.**

- 1. Prior Written Notice will be given to the parent or parents of a child with a disability within a reasonable time before SCS: (34 CFR 300.503(a))
  - a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or



- advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or
  - b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.
2. The notice will include: (34 CFR 300.503(b))
    - a. A description of the action proposed or refused by SCS;
    - b. An explanation of SCS's proposal or refusal to take the action;
    - c. A description of any other factors that SCS considered and the reasons for the rejection of those options;
    - d. A description of each evaluation procedure, test, record, or report SCS used as a basis for the proposed or refused action;
    - e. A description of any other factors that are relevant to SCS's proposal or refusal;
    - f. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards and, if notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
    - g. Sources for the parent or parents to contact in order to obtain assistance in understanding the provisions of this section.
  3. The notice will be:
    - a. (i) Written in language understandable to the general public and (ii) provided in the native language of the parent or parents of other mode of communication used by the parent or parents, unless it is clearly not feasible to do so. (34 CFR 300.503(c))
    - b. If the native language or other mode of communication of the parent(s) is not a written language, SCS will take steps to ensure that:
      - (1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;
      - (2) The parent(s) understand the content of the notice; and
      - (3) There is written evidence that the requirements of subdivisions (1 and (2) of this subdivision have been met.

**D. Procedural Safeguards Notice (Parent Rights) (34 CFR 300.504)**

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability will be given to the parent(s) by SCS only one time a school year, except that a copy will be given to the parent(s) upon:
  - a. Initial referral for or parent request for evaluation;
  - b. If the parent requests an additional copy;
  - c. Receipt of the first state complaint during a school year;
  - d. Receipt of the first request for a due process hearing during a school year; and
  - e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct.
2. SCS places a current copy of the procedural safeguards notice on its Internet website, but SCS does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. SCS offers the

- parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision 1 of this subsection.
3. The procedural safeguards notice includes a full explanation of all of the procedural safeguards relating to:
    - a. Independent educational evaluation;
    - b. Prior written notice;
    - c. Parental consent;
    - d. Access to educational records;
    - e. Opportunity to present and resolve complaints through the due process procedures;
    - f. The availability of mediation;
    - g. The child's placement during pendency of due process proceedings;
    - h. Procedures for students who are subject to placement in an interim alternative educational setting;
    - i. Requirements for unilateral placement by parents of children in private schools at public expense;
    - j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
    - k. Civil actions, including the time period in which to file those actions;
    - l. Attorneys' fees; and
    - m. The opportunity to present and resolve complaints through the state complaint procedures, including:
      - (1) The time period in which to file a complaint;
      - (2) The opportunity for SCS to resolve the complaint; and
      - (3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.
  4. The notice required under this subsection will meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

**E. Parental consent.**

1. Required parental consent. Informed parental consent is required before:
  - a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))
  - b. An initial eligibility determination or any change in categorical identification;
  - c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))
  - d. Any revision to the child's IEP services;
  - e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;
  - f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;

- g. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)
- h. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))
- 2. Parental consent not required. Parental consent is not required before:
  - a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))
  - b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent(s) of all children; (34 CFR 300.300(d)(1))
  - c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)
  - d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals;
  - e. A teacher's or related service provider's observations or ongoing classroom evaluations;
  - f. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if: (34 CFR 300.300(a)(2))
    - (1) Despite reasonable efforts, SCS cannot discover the whereabouts of the parent(s);
    - (2) The parent's rights have been terminated; or
    - (3) The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.
- 3. Revoking consent.
  - a. If, at any time subsequent to the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services: (34 CFR 300.300(b)(4))
    - (1) SCS will not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 8VAC20-81-170 C. before ceasing the provision of special education and related services;
    - (2) SCS will not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;
    - (3) SCS failure to provide the special education and related services to the child will not be considered a violation of the requirement to provide FAPE; and
    - (4) SCS is not required to convene an IEP meeting or to develop an IEP for the child for the further provision of special education and related services.
  - b. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.

**4. Refusing consent.**

- a. If the parent(s) refuses consent for initial evaluation or a reevaluation, SCS may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. SCS does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))
- b. If the parent(s) refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3) and (4))
  - (1) SCS may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;
  - (2) SCS's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and
  - (3) SCS is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which SCS requests consent. However, SCS may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.
- c. If the parent(s) of a parentally placed private school child refuses consent for an initial evaluation or a reevaluation, SCS: (34 CFR 300.300(d)(4))
  - (1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and
  - (2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.
- d. SCS may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of SCS, except as provided by this chapter. (34 CFR 300.300(d)(3))

**5. Withholding consent.**

- a. If the parent(s) fails to respond to a request to consent for an initial evaluation, SCS may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. SCS does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))
- b. Informed parental consent need not be obtained for reevaluation if SCS can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond. (34 CFR 300.300(c)(2))
- c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and related services, SCS follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

**6. Consent for initial evaluation is not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))**

7. SCS will make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))
8. To meet the reasonable measures requirement of this section, SCS will have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))
  - a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; and
  - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

**F. Parental rights regarding use of public or private insurance.** SCS using Medicaid to pay for services required under this chapter, as permitted under the public insurance program, will provide notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

**G. Confidentiality of information.**

**1. Access rights. (34 CFR 300.613)**

- a. SCS permits the parent(s) to inspect and review any education records relating to their children that are collected, maintained, or used by SCS under this chapter. SCS complies with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.
  - b. The right to inspect and review education records under this section includes:
    - (1) The right to a response from SCS to reasonable requests for explanations and interpretations of the records;
    - (2) The right to request that SCS provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
    - (3) The right to have a representative of the parent inspect and review the records.
  - c. SCS may presume that a parent has authority to inspect and review records relating to the parent's children unless SCS has been provided a copy of a judicial order or decree, or other legally binding documentation, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.
- 2. Record of access.** SCS will keep a record of parties, except parents and authorized employees of SCS, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)

3. Record on more than one child. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)
4. List of types and locations of information. SCS will provide a parent(s) on request a list of the types and locations of education records collected, maintained, or used by the local educational agency. (34 CFR 300.616)
5. Fees. (34 CFR 300.617)
  - a. SCS does not charge a fee for copies of records that are made for a parent(s) when exercising their right to inspect and review records.
  - b. SCS does not charge a fee to search for or to retrieve information unless the parent(s) is requesting multiple copies, in which case SCS may charge a fee for additional copies..
  - c. SCS does not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E 7.
6. Amendment of records at parent's request. (34 CFR 300.618)
  - a. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.
  - b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7 of this subsection.
7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34CFR 300.619)
8. Results of hearing. (34 CFR 300.620)
  - a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.
  - b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
  - c. Any explanation placed in the records of the child under this section shall:
    - (1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

- (2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.
- 9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC § 1232g; 34 CFR 300.621)
  - a. The local educational agency may:
    - (1) Develop local procedures for such a hearing process; or
    - (2) Obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.
- 10. Consent. (34 CFR 300.32; 34 CFR 300.622)
  - a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC § 1232g).
  - b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:
    - (1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.
    - (2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent(s) resides.
- 11. Safeguards. (34 CFR 300.623)
  - a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
  - b. Each local educational agency shall ensure that electronic communications via emails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.
  - c. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
  - d. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.



- e. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
12. Destruction of information. (34 CFR 300.624)
- a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.
  - b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.
  - c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.
- H. Electronic mail. If the local educational agency makes the option available, parent(s) of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)
- I. Electronic signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. (Chapter 42.1 (§59.1-479 et seq.) of Title 59.1 of the Code of Virginia)
- J. Audio and video recording.
- 1. The local educational agency shall permit the use of audio recording devices at meetings convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or revise the child's IEP under 8VAC20-81-110 F; and to review discipline matters under 8VAC20-81-160 D. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent(s) shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes a part of the child's educational record.
  - 2. The local educational agency may have policies that prohibit, limit, or otherwise regulate the use of:
    - a. Video recording devices at meetings convened pursuant to this chapter; or
    - b. Audio or video recording devices at meetings other than those meetings identified in subdivision 1 of this subsection.
  - 3. These policies shall:



- a. Stipulate that the recordings become part of the child's educational record;
- b. Ensure that the policy is uniformly applied; and
- c. If the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

## **Procedural Safeguards – SCS Process**

### **A. Procedural Safeguards – Student Records**

1. The parent(s) is given the opportunity to examine their child's records at any time.
2. If the parent(s) finds misinformation in the child's file, the information can either be changed or removed at the parent's request.
3. The parent(s) is given a copy of all data pertaining special education including: Child Study, Eligibility, IEP, Discipline.
4. The parent(s) may have a copy of the child's records at no cost.
5. The parent(s) has the right to have a representative review the records; but, such a request must be in writing.

### **B. Procedural Safeguards - Meeting Notices**

1. SCS provides notice to the parent(s) each time meetings are called with respect to identification, evaluation, and educational placement of the child.
2. SCS encourages the parent(s) to participate in all of the above meetings.
3. The notice indicates the time, place, purpose, location and those who will be in attendance. The parent may bring anyone they would like with them to the meetings who has knowledge or special expertise pertaining to the child.
4. For those children coming from the infant program, Part C to Part B, the parent may request that a representative from Part C sit in on the initial IEP meeting.
5. All notices will be in the child's native language if feasible to do so.
6. Documentation will be kept pertaining to all notices sent and communication between home and school.

### **C. Procedural Safeguards – Parent Involvement**

1. SCS ensures that the child's parent is part of the IEP team. If the parent cannot be there in person, SCS will offer other means of involvement: e-mail, conference call, video conferencing, etc.
2. SCS ensures that the child's parent is part of the Family and Preservation Team (FAPT) through the Department of Social Services that makes decisions on the educational placement of their child.
3. If necessary, SCS will provide an interpreter for those parents who speak another language or for those parent who are deaf and need sign-language.
4. The exception to the IEP team determination regarding placement is with disciplinary actions. If a student misbehaves, the principal in collaboration

with a special education teacher will make disciplinary decisions. If the student threatens bodily harm to self or others, is in possession of drugs, or tries to either buy or sell drugs, or possess a weapon on school property or at school functions, it is an automatic 45 days in the Alternative Education Program. The parent(s) will be sent a copy of disciplinary actions and if it is a change in placement, a Written Notice will be sent. If the student receives an accumulation of 10 school days, then the parent(s) will be notified of a Causal Hearing and Manifestation Determination and asked to attend.

5. If the parent refuses to allow their child an evaluation for special education or a reevaluation, SCS is not required to go to mediation or due process.

**D. Procedural Safeguards – Independent Educational Evaluation (IEE)**

1. The parent(s) have the right to an IEE at no cost to them for each error in the report or part that they disagree with.
  - a. The parent is entitled to only one IEP each time SCS conducts and evaluation -----.
  - b. SCS selects a professional to administer the IEE who has the same qualifications the SCS uses to initiate the evaluation. Timelines cannot be imposed on the independent evaluator.
  - c. SCS tries to locate an evaluator in as close proximity as possible.
  - d. If the parent(s) obtain an IEE and it meets local education criteria, it will be considered by SCS; however, such a report will not dictate program, services, or placement.

**E. Procedural Safeguards – Prior Written Notice (PWN)**

1. Prior Written Notice is given anytime SCS proposes, initiates or refuses a change in identification, program, services, evaluation, or placement.
2. PWN reviews what the decision was based upon, other options considered, other factors, anything refused or accepted by SCS, and any evaluation data that the decision was based upon.
3. The PWN provides contact information in case the parent(s) and/or adult student need assistance in understanding the information.
5. The PWN is written in the native language of the parent(s) or other mode of communication if it is feasible to do so. The notice is translated orally if necessary.

**F. Procedural Safeguards Notice – Parent Rights**

1. The parent and/or adult student is given a copy of their Procedural Safeguards one-time per year at the IEP meeting and offered another if they are in disagreement with SCS decision. Except a copy is given:
  - a. Initial referral for or parent request for evaluation;
  - b. If the parent(s) request an additional copy;
  - c. Receipt of the first state complaint;
  - d. Receipt of the first request for due process;
  - e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement because of a violation in the Code of Conduct.

2. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:
  - a. Independent educational evaluation;
  - b. Prior written notice;
  - c. Parental consent;
  - d. Access to educational records;
  - e. Opportunity to present and resolve complaints through the due process procedures;
  - f. The availability of mediation;
  - g. The child's placement during pendency of due process proceedings;
  - h. Procedures for students who are subject to placement in an interim alternative educational setting;
  - i. Requirements for unilateral placement by parents of children in private schools at public expense;
  - j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
  - k. Civil actions, including the time period in which to file those actions;
  - l. Attorneys' fees; and
  - m. The opportunity to present and resolve complaints through the state complaint procedures, including:
    - (1) The time period in which to file a complaint;
    - (2) The opportunity for the local educational agency to resolve the complaint; and
    - (3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

**G. Procedural Safeguards – Parent Consent Not Required** For a teacher or specialist to conduct a screening to determine appropriate instructional strategies for curriculum implementation, as such a screening is not considered an evaluation.

2. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral test;
3. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent or parents of all children;
4. Administration of a test or other evaluation that is used to measure progress on the child's goals and benchmarks or objectives and is included in the IEP;
5. A teacher's or related service provider's observations or ongoing classroom evaluations.

**H. Procedural Safeguards – Parent Consent**

1. Informed parental consent must be obtained before:
  - a. Conducting an initial evaluation or reevaluation, including a functional behavioral test if such test is not a review of existing data conducted at an IEP meeting;
  - b. Any change in identification of a child with a disability;

- c. Initial provision of special education and related services to a child with a disability and any revision to the child's IEP services;
  - d. Any partial or complete termination of special education and related services, except for graduation with a standard or advanced studies diploma; and
  - e. Parental consent is obtained each time that SCS seeks to access public benefits or insurance to provide special education or related services to a child with a disability. The child's parents are also notified that their refusal to allow access to their public benefits or insurances does not relieve SCS of its responsibility to ensure that all required services are provided at no cost to the parents.
2. Consent for initial evaluation is not be construed as consent for initial placement.
  3. If a parent of a child who is home-schooled, or who is parentally-placed in a private school, refuses consent for either an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, SCS does not use mediation or a due process hearing to secure parental consent. However, if the parent fails to provide consent, SCS does not consider the child eligible for equitable services.
  4. If a parent revokes consent, that revocation is not retroactive, SCS is not liable for failure to convene an IEP team or develop an IEP for a child whose parents refuse consent or fail to respond to a request for consent to the initial provision of special education and related services.
  5. If the parent of a child who is enrolled in SCS, or who is seeking enrollment in SCS, refuses consent for initial evaluation, or fails to respond to SCS request for consent for an initial evaluation, SCS may, but is not required to, pursue the evaluation via mediation or due process. If the parent refuses consent for a reevaluation, SCS may, but is not required to, pursue the evaluation via mediation or due process.
  6. Failure to respond to request for reevaluation.
    - a. Informed parental consent need not be obtained for reevaluation if SCS can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent or parents have failed to respond.
    - b. To document that SCS has made reasonable efforts to obtain parental consent, when required, SCS documents.
    - c. To meet the reasonable measures requirement, SCS keeps a record of its attempts to secure the consent, such as:
      - (1) Detailed records of telephone calls made or attempted and the results of those calls;
      - (2) Copies of correspondence sent to the parent or parents and any responses received; and
      - (3) Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.
  7. SCS does not use a parent's or parents' refusal to consent to one service or activity to deny the parent, parents, or child any other service, benefit, or activity of SCS, except as provided by this chapter
  8. If a child is a ward of the state and is not residing with a parent, SCS makes "reasonable efforts" to obtain informed consent from a parent for

an initial evaluation to determine the child's eligibility for special education and related services, unless

- a. Despite reasonable efforts, SCS cannot discover the parent's whereabouts;
- b. The parent's rights have been terminated; or
- c. The rights of the parent to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by the individual appointed by the judge to represent the child.

This can be accomplished by:

- (1) The judge of his/her designee providing documentation either to the central office or the child's school. If either occurs, the other must be given a copy of the court order immediately.
- (2) A representative of the Department of Social Services must provide SCS with a copy of the court order.
- (3) Upon receipt of the court order, Scott County Public School must appoint a surrogate parent to represent the child.
- (4) If the child is in foster care, the foster parent(s) must be asked to serve as a surrogate for the child.
- (5) If the foster parent(s) refuse, SCS must appoint an alternate surrogate parent. (Refer to Surrogate Parent in this manual.)

#### **I. Parental Rights Regarding Use of Public or Private Insurance**

1. SCS using Medicaid or other public insurance to pay for services provides notice to the parent or parents that:
  - a. The parent or parents are not required to sign up for public insurance in order for their child to receive a free appropriate public education;
  - b. The parent or parents are not required to incur out-of-pocket expenses, such as payment of a deductible or copay amounts incurred in filing a claim for services; and
  - c. SCS may not use a child's benefits under a public insurance program if that use would (i) decrease available lifetime coverage or any other insured benefit; (ii) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (iii) increase premiums or lead to the discontinuation of insurance; or (iv) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
  - d. Obtain parental consent to release educational records to the public insurance program for billing purposes in accordance with the provisions of the Management of the Child's Scholastic Record in the Public Schools of Virginia
2. SCS using private insurance to pay for services must:
  - a. Obtain parental consent each time SCS proposes to access the parent's private insurance proceeds.

- b. Obtain parental consent and inform the parent that their refusal to permit SCS to access their private insurance does not relieve SCS of its responsibility to ensure that all required services are provided at no cost to the parent or parents each time it proposes to access the parent's or parents' private insurance.
- c. Obtain parental consent to release educational information to the private insurance company for billing purposes in accordance with the provisions of the Management of the Child's Scholastic Record in the Public Schools of Virginia.

**J. Confidentiality of Personally Identifiable Information**

- 1. Access rights
  - a. SCS permits a parent or parents to inspect and review any education records relating to their children that are collected, maintained, or used by SCS. SCS complies with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in no case more than 45 days after the request has been made.
  - b. The right to inspect and review education records includes:
    - (1) The right to a response from SCS to reasonable requests for explanations and interpretations of the records;
    - (2) The right to request that SCS provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
    - (3) The right to have a representative of the parent inspect and review the records.
  - c. SCS may presume that a parent has authority to inspect and review records relating to his children unless SCS has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.
- 2. Record of access. SCS must keep a record of parties, except parents and authorized employees of SCS, obtaining access to education records collected, maintained, or used under Part B of the Individuals with Disabilities Education Act including the name of the party, the date of access, and the purpose of the access.
  - a. The following persons must have access to scholastic records:
    - (1) Professional personnel within SCS who have legitimate educational interests in the child
    - (2) Adult clerical personnel within SCS charged with the responsibility of record maintenance
    - (3) The child who is over 18 years of age may see his/her own record
    - (4) The parent, guardian, or duly appointed surrogate of the child until the child reaches the age of majority
    - (5) An authorized representative of:
      - (a) The Comptroller General of the United States
      - (b) The Secretary of Education
      - (c) The superintendent of Schools
      - (d) State Educational Authorities

- (6) A person designated in writing by the child who is eighteen years of age, or the parent or parents of the child who is under the age of eighteen or over the age of eighteen if found to be incompetent.
  - (7) The Superintendent of Public Instruction or any member of his staff.
- 3. Records on more than one child. If any education record includes information on more than one child, the parent or parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.
- 4. List of types and locations of information. SCS provides on request to a parent or parents a list of the types and locations of education records collected, maintained, or used by the local educational agency.
- 5. Fees.
  - a. SCS may charge a fee for copies of records that are made for a parent or parents under this chapter if the fee does not effectively prevent the parent or parents from exercising their right to inspect and review those records. SCS does not charge a fee for copies at this time.
  - b. SCS may not charge a fee to search for or to retrieve information under this section.
- 6. Amendment of records at parent's request.
  - a. A parent or parents who believe that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request SCS to amend the information.
  - b. SCS decides whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If SCS decides to refuse to amend the information in accordance with the request, it must inform the parent or parents of the refusal and advise the parent or parents of the right to a hearing. A Written Notice would be given stating the reason for refusal.
- 7. Opportunity for a hearing. SCS must provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.
- 8. Results of hearing.
  - a. If, as a result of the hearing, SCS decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
  - b. If, as a result of the hearing, SCS decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
  - c. Any explanation placed in the records of the child under this section must:
    - (1) Be maintained by SCS as part of the records of the child as long as the record or contested portion is maintained by SCS; and

- (2) If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.
- 9. Hearing procedures must be conducted in accordance with the procedures under the Family Educational Rights and Privacy Act.
- 10. Consent.
  - a. Except as to disclosure to law enforcement and judicial authorities for which parental consent is not required under the Family Educational Rights and Privacy Act, parental consent must be obtained before personally identifiable information is:
    - (1) Disclosed to anyone other than officials of SCS or its agencies; or
    - (2) Released to officials of participating agencies providing or paying for transition services.
    - (3) Released between SCS and the LEA where the private school is located, if a child who is a resident of this locality, is enrolled, or is going to enroll in a private school that is not located in this locality.
  - b. SCS subject to the Family Education Rights and Privacy Act may not release information from education records to any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under the Individuals with Disabilities Education Act without parental consent unless authorized to do so under the Family Education Rights and Privacy Act.
  - c. In the event that a parent refuses to provide consent, SCS must use established policies and procedures.
- 11. Safeguards.
  - a. SCS must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
  - b. One official at SCS must assume responsibility for ensuring the confidentiality of any personally identifiable information.
  - c. All persons collecting, maintaining, or using personally identifiable information must receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of information.
- 12. Destruction of information.
  - a. SCS must inform parents when personally identifiable information collected, maintained is no longer needed to provide educational services to the child.
  - b. The information must be destroyed at the request of the parents. However, a permanent record of a child's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
  - c. SCS complies with the Records Retention and Disposition Schedule of the Library of Virginia.
  - d. When a parent(s) of an eligible child makes a request to review scholastic records relating to the child, the school must disclose the scholastic information within 5 administrative. If it is practically impossible to release the information in that length of time, the SCS must notify the requesting party and must have an additional 7 days. SCS may have up to 45 days to comply with the request.



- e. SCS may presume that both parents have the authority to inspect and review records relating to their child(ren) unless SCS has proof of guardianship, custody, or divorce.
- f. SCS may disclose upon child transfer information from scholastic records to another LEA without parental consent unless prohibited by other applicable law.
- g. Scholastic information may be purged/destroyed five years after the child leaves school unless otherwise requested by the parent. An attempt to contact the parent or parents prior to the destruction of records must be made. The parent must be invited to obtain records prior to the destruction of records. If the parent does not respond within 15 days, the school may begin the destruction of records. All scholastic information in the Central Office must be purged except for the most current psychological evaluation and eligibility minutes unless requested by the parent for a full destruction of records. (These two components may be useful for future use in the determination of disability for Social Security benefits).

**K. Electronic Mail**

- 1. If the parent requests electronic mail, SCS will provide requested items as soon as possible but no later than 45 school days.
- 2. An electronic signature has the same legal effect as an original signature.

**L. Audio & Video Recording**

- 1. Audio recordings are allowed during meetings in SCS (Child Study, Eligibility, IEP, Triennial, and/or discipline); however, if the parent records the meeting then SCS will also record the meeting. The parent(s) provide their own recording devices. If either recording device stops working during the meeting, then the other party will make a copy to share.
- 2. The recording becomes part of the student's record.
- 3. Video recordings are not allowed in SCS unless there are extenuating circumstances. If so, the parent and SCS must come to a consensus for its use. SCS does not allow the use of video recording for all situations in which audio recordings are required in the Virginia Regulations.

**Agency Request for Student Information**

An Interagency Agreement exists between all agencies to share information. If SCS determines that other agencies have information on a specific child or there becomes a need to share information, with written parent permission the various agencies are contacted by utilizing **CONSENT TO EXCHANGE INFORMATION**. Any agency needing information on a child must obtain written parent permission prior to any release of information. There also exists an **INTERAGENCY CONSENT TO RELEASE CONFIDENTIAL INFORMATION FOR ALCOHOL OR DRUG PATIENTS**.

## **FERPA**

The Family Educational Rights and Privacy Act (FERPA) affords parents and children over 18 years of age (“eligible children”) certain rights with respect to the child’s education records. They are:

- The right to inspect and review the child’s education records within 45 days of the day the Division receives a request for access.

Parents or eligible children should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal must make arrangements for access and notify the parent or eligible child of the time and place where the records may be inspected.

- The right to request the amendment of the child’s education records that the parent or eligible child believes are inaccurate or misleading.

Parents or eligible children may ask the Scott County School Division to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the Division decides not to amend the record as requested by the parent or eligible child, the Division must notify the parent or eligible child of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures must be provided to the parent or legible child when notified of the right of the hearing.

- The right to consent to disclosures of personally identifiable information contained in the child’s education records, except to the extent that FERPA authorizes disclosure without consent. One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. An instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with who the Division has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or child serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his/her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his/her professional responsibility. Upon request, the Division discloses educational records without consent to officials of another school division in which a child seeks or intends to enroll. [NOTE: FERPA requires a school division to make a reasonable attempt to notify the child of the records request unless it states in its annual notification that it intends to forward records on

request.]

- Child directory information must be released to military and college recruiters in accordance to Federal regulations and guidelines.

The right to file a complaint with the US Department of Education concerning alleged failures by the Division to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

**FAMILY POLICY COMPLIANCE OFFICE  
US DEPARTMENT OF EDUCATION  
400 MARYLAND AVE. , SW  
WASHINGTON, DC 20202-5901**

#### **Procedures for Requesting Therapy**

SCS provides therapy (physical therapy [PT], occupational therapy [OT], speech, counseling, etc.) to children with disabilities on an as need basis. Anyone can make a referral for therapy services. The referral may be made through the principal, special education teacher, or administrator of special education. Once a referral is received, the parent and or parents are informed of their Parental Rights Regarding Use of Public or Private Insurance and are requested to complete any necessary paperwork (referral packet) provided by the contracting agency or obtained from the Administrator of Special Education. The referral packet is forwarded to the administrator of special education for approval. The referral is then forwarded to the person and/or agency providing the service. A physician's authorization must be obtained prior to the evaluation. If the physician or health department denies the authorization of services, written notice must be given to the parent and the evaluation must not be completed until the parent or parents can obtain authorization from the child's physician or health department. Once the evaluation is complete, the IEP Team must convene a meeting to review the evaluation and make a determination of services. If the child is not identified as a special education child, the evaluation report must be forwarded to the 504 Eligibility Team. If it is determined that a major life activity is not being affected, a health care plan may be written or services may be provided by SCS with a verbal agreement and no formal written plan.

# TRANSFER OF RIGHTS TO CHILDREN WHO REACH THE AGE OF MAJORITY 8VAC 20-81-180

## 8 VAC 20-81-180 Transfer of Rights/Age of Majority

- A. All rights accorded to the parent(s) under the Act transfer to the student upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution. (34 CFR 300.520)
- B. Notification.
1. The local educational agency shall notify the parent(s) and the student of the following: (34 CFR 300.520)
    - a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and
    - b. That procedures exist for appointing the parent(s) or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection C of this section.
  2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student and parent(s) have been informed of the rights that will transfer to the student on reaching the age of 18. (34 CFR 300.320(c))
  3. The local educational agency shall provide any further notices required under the Act to both the student and the parent(s).
  4. The local educational agency may continue to invite the parent(s), as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.
  5. The adult student may invite the student's parent(s) to participate in meetings where decisions are being made regarding the student's educational program.
- C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Act shall transfer to the adult student, unless one of the following actions has been taken:
1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
  2. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency shall rely on such designation until notified that the authority to act under

the designation is revoked, terminated, or superseded by court order or by the adult student;

3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures: (34 CFR 300.520(b))
  - a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:
    - (1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.
    - (2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Supreme Court of Virginia; or (v) a court-appointed special advocate for the adult student.
  - b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.
  - c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:
    - (1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;
    - (2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or
    - (3) Communicate such understanding in any meaningful way.
  - d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.
  - e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

- f. The adult student's ability to provide informed consent shall be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of local educational agencies. Challenges shall be provide in writing to the local educational agency's administrator of special education who then shall notify the adult student and current appointed representative.
    - (1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;
    - (2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or
  - 4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with mental retardation in accordance with § 37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state operated program.
- D. If the local educational agency receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this section, the local educational agency shall designate the parent(s) of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).
  - 1. If the parent(s) or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:
    - a. An adult brother or sister;
    - b. An adult aunt or uncle; or
    - c. A grandparent.
  - 2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

## **SCS Transfer of Rights - Process and Procedures**

**A. Transfer of Rights Age of Majority.** All rights accorded to the parent(s) under the Act transfer to children upon the age of majority (age 18), including those children who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution. SCS informs the parent and the student of these rights when they turn 17 years of age; unless it happens to be a transfer student either during their 11<sup>th</sup> grade year or 12<sup>th</sup> grade year. Then SCS has up until 60 calendar days prior to their 18<sup>th</sup> birthday to inform the. Notice of Age of Majority is part of the student's IEP.

1. SCS or the adult student can invite the parent to continue to attend the meetings pertaining to the student's adult educational program.
2. All rights transfer to the student on his/her 18<sup>th</sup> birthday.
3. The student is presumed to be legally competent unless the parent has the student declared legally incompetent in a court of law.

**B. Legally Incompetent**

1. An adult student can be declared legally incompetent/incapacitated by a court of competent jurisdiction.
2. The adult student can give power of attorney, in writing, to his/her parent or another competent adult to act on the student's behalf concerning all notices and meetings.
3. The adult is recognized until SCS is notified, in writing, that power of attorney has been revoked, terminated, or superseded either by the court or the adult student.
4. SCS will appoint a surrogate parent for any adult student who has been found incompetent ( for definition of incompetent refer to Federal Regulations -Transfer of Rights to Students who reach the age of majority and C 3 c (1) (2) (3)) eligible for special education and who does not have an adult to represent them. An educational representative may be appointed based on the following conditions and procedures.
  - a. Two professionals (one from list one and one from list two):
    - (1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.
    - (2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult child.
  - b. The individuals who provide the certification may not be employees of SCS currently serving the adult child or be related by blood or marriage to the adult child.

- c. The certification that the adult child is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult child's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult child is undergoing initial eligibility for special education services.
  - d. The certification must state when and how often a review of the adult child's ability to provide informed consent must be made and why that time period was chosen.
  - e. The adult child's ability to provide informed consent must be recertified at any time that the previous certifications are challenged. Challenges can be made by the child or by anyone with a bona fide interest and knowledge of the adult child, except that challenges cannot be made by employees of SCS. Challenges must be provided in writing to SCS' administrator of special education who then must notify the adult child and current appointed representative.
    - (1) Upon receipt of a written challenge to the certification by the adult child, SCS does not rely on an educational representative for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;
    - (2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult child, SCS does not rely on an educational representative, until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. SCS does not rely upon the designated educational representative until the representative is affirmed by the court; or
  - 5. The adult child, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training and treatment of the mentally retarded in accordance with the Code of Virginia or in a coma and eligible for admission to a state hospital. The state-operated program serving the adult child may rely on the judicial certification and appoint an educational representative to act on the child's behalf during the child's stay at the state-operated program.
- C. Written Notification. If SCS receives written notification from a court of competent jurisdiction or if the state-operated program receives the judicial certification that a child with disabilities is incompetent and unable to act on his/her own behalf, SCS designates the parent or parents of the adult child to act as an educational representative of the adult child (unless the child is married, in which event the child's adult spouse must be designated as educational representative).
- 1. If the parent or parents or adult spouse is not available and competent to give informed consent, the administrator of special education or designee must designate a competent individual from among the following:
    - a. An adult brother or sister;



- b. An adult aunt or uncle; or
- c. A grandparent.
- 2. If no family member from the previous categories is available and competent to serve as the adult child's educational representative, then a person trained as a surrogate parent must be appointed to serve as the educational representative by the local educational agency.
- 2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

## MEDIATION 8 VAC 20-81-190

### 8VAC20-81-190 Mediation

- A. Each local educational agency shall ensure that the parent(s) of a child with a disability are informed of the option of mediation to resolve disputes involving any matter arising under Part B of the Act, including the identification, evaluation, or educational placement and services of the child, the provision of a free appropriate public education to the child, and matters arising prior to the filing of a state complaint or request for a due process hearing. Mediation is available to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent. (§ 22.1-214 B of the Code of Virginia; 34 CFR300.506(a)) Department of Education 8VAC20-81 Special Education Regulations
- B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.506(b)(1))
1. Voluntary on the part of both the local educational agency and parent;
  2. Not used to deny or delay a parent's(s') right to a due process hearing or to deny any other rights afforded under the Act; and
  3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.
- C. The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under § 1471 or 1472 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))
- D. In accordance with the Virginia Department of Education's procedures: (34 CFR 300.506(b)(3) and (4))
1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;
  2. The mediator is chosen on a rotation basis; and
  3. The Virginia Department of Education bears the cost of the mediation costs in subsection C of this section.

- E. The mediation process shall: (34 CFR 300.506(b)(5) through (b)(8))**
- 1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;**
  - 2. Conclude with a written legally binding agreement, if an agreement is reached by the parties to the dispute, that:**
    - a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;**
    - b. Is signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and**
    - c. Is enforceable in any state or federal court of competent jurisdiction.**
  - 3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.**
- F. An individual who serves as a mediator: (34 CFR 300.506(c))**
- 1. May not be an employee of any local educational agency or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;**
  - 2. Shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and**
  - 3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.**

### **SCS Mediation - Process and Procedures**

- A. SCS ensures that the parent or parents of a child with a disability are informed of the option of mediation to resolve disputes involving SCS's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, at a minimum, whenever a due process hearing is requested. SCS ensures the following additional provisions regarding mediation.**
- 1. Parties are allowed to resolve disputes regarding special education and related services, including matters arising prior to the filing of a request for a due process hearing, through the mediation process.**
  - 2. If a resolution is reached via the mediation process, a written mediation agreement must be developed, which must be legally binding, and enforceable in any state court of competent jurisdiction or in federal district court.**
- B. SCS uses the Virginia Department of Education's mediation process to resolve such disputes. The procedures must ensure that the process is:**

1. Voluntary on the part of both SCS and parent;
2. Not used to deny or delay a parent(s) right to a due process hearing or to deny; and
3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services, from a list maintained by the Virginia Department of Education.
4. If SCS and the parent(s) reach an agreement, a resolution is placed in writing and a copy sent to the DOE>

**C. SCS establishes procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parent or parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center or an appropriate alternative dispute resolution entity. The procedures are as follows:**

1. The parent is notified of the right to go to mediation or to sit down with a disinterested party who meets the above definition to try and come to a consensus with SCS representatives. SCS explains the benefits of the mediation process and encourages parent participation.
2. The parent(s) is given a copy of their Procedural Safeguards and informed of their rights to go to due process.
3. If the parent(s) rejects both mediation and third party involvement, they have the right to go to due process and will be given the appropriate forms to file a complaint.
4. If the parent rejects mediation but is agreeable to a third party, a meeting is called within 10 administrative days.
5. If SCS and the parent(s) reach an agreement, a resolution is placed in writing which becomes binding for both parties.
6. If either party, SCS or the parent(s), fail to follow-through after an agreement was reached and placed in writing; another meeting can be called or a complaint filed with the DOE.
7. CS may not deny or delay a parent's or parents' right to a due process hearing if the parent or parents choose not to participate in this meeting.

**D. In Accordance with the Virginia Department of Education's Procedures:**

1. The Virginia Department of Education must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;
2. The mediator must be chosen on a rotation basis; and
3. The Virginia Department of Education must bear the cost of the mediation process, including costs in subsection C of this section.

**E. The mediation process must:**

Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

1. Conclude with a written mediation agreement if an agreement is reached by the parties to the dispute; and
2. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due

process hearings or civil proceedings. Parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

**F. An individual who serves as a mediator:**

- 1. May not be an employee of any local educational agency or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;**
- 2. Must not have a personal or professional conflict of interest; and**
- 3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.**

## COMPLAINT RESOLUTION PROCEDURES

### 8 VAC 20-81-200

#### 8 VAC 20-81-200 Complaint Resolution Procedures

- A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system. (34 CFR 300.151)
- B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall: (34 CFR 300.153)
1. Be in writing;
  2. Include the signature and contact information for the complainant;
  3. Contain a statement that a local educational agency has violated the Act or these special education regulations;
  4. Include the facts upon which the complaint is based;
  5. If alleging violations with respect to a specific child, include:
    - a. The name and address of the residence of the child;
    - b. The name of the school the child is attending;
    - c. In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney- Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;
    - d. A description of the nature of the problem of the child, including facts relating to the problem; and
    - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
  6. Address an action that occurred not more than one year prior to the date the complaint is received;
  7. Contain all relevant documents; and
  8. Be provided simultaneously to the local educational agency or public agency serving the child.
- C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and the local educational agency in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.
- D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an investigation to determine whether the local educational agency is in compliance with applicable law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)
1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each

complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.

- a. The notification sent to the local educational agency shall include:
    - (1) A copy of the complaint;
    - (2) An offer of technical assistance in resolving the complaint;
    - (3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;
    - (4) Notification of the opportunity for the parties to engage voluntarily in mediation;
    - (5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:
      - (a) Written documentation that the complaint has been resolved; or
      - (b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the parent(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.
  - b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completion of the investigation within 60 calendar days.
  - c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.
2. If a reply from the local educational agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the local educational agency advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.
  3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

- a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:
    - (1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
    - (2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.
  - b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.
  - c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.
- 4. During the course of the investigation, the Virginia Department of Education shall:
  - a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and An independent on-site investigation, if necessary.
  - b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
  - c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.
    - (1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.
    - (2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.
    - (3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.
  - d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:
    - (1) Technical assistance activities;
    - (2) Negotiations; and
    - (3) Corrective actions to achieve compliance.
  - e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.
  - f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the local educational agency to bring it into compliance with applicable timelines.



5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:
  - a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and
  - b. Appropriate future provision of services for all children with disabilities.
- E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.
- F. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.
- G. If the local educational agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.
- H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§ 22.1-214 E of the Code of Virginia)
- I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. (34 CFR 300.151)

#### **SCS Complaint Resolution Procedures - Process and Procedures**

- A. **The VDOE maintains and operates a complaint system** that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities.
- B. **A complaint may be filed with the Virginia Department of Education** by any individual, organization, or an individual from another state and shall:
  1. Be in writing;
  2. Include the signature and contact information for the complainant;

3. Contain a statement that a local educational agency has violated the Act or these special education regulations;
  4. Include the facts upon which the complaint is based;
  5. If alleging violations with respect to a specific child, include:
    - a. The name and address of the residence of the child;
    - b. The name of the school the child is attending;
    - c. In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;
    - d. A description of the nature of the problem of the child, including facts relating to the problem; and
    - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
  6. Address an action that occurred not more than one year prior to the date the complaint is received;
  7. Contain all relevant documents; and
  8. Be provided simultaneously to the local educational agency or public agency serving the child.
- C. The VDOE has 7 days to determine whether the complaint is valid or not. The VDOE will give the complainant an opportunity to resubmit their complaint if the 1<sup>st</sup> submission was invalid.
- D. Upon receipt of a valid complaint, the VDOE will contact SCS and initiate an investigation to see if SCS has violated applicable law and regulations.
1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and SCS against which the violation has been alleged, acknowledging receipt of a complaint.
    - a. The notification sent to SCS shall include:
      - (1) A copy of the complaint;
      - (2) An offer of technical assistance in resolving the complaint;
      - (3) A statement that SCS has the opportunity to propose, at the SCS's discretion, a resolution of the complaint;
      - (4) Notification of the opportunity for the parties to engage voluntarily in mediation;
      - (5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:
        - (a) Written documentation that the complaint has been resolved; or
        - (b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by SCS to the parents(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, SCS will also simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.
    - b. The notification sent to the complainant and the local educational agency shall provide the complainant and SCS with an opportunity to

submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completion of the investigation within 60 calendar days.

- c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and SCS, unless the complainant has obtained and filed the appropriate consent for release of information.
2. SCS has 10 business days of the receipt of the notice, to send a report to the Virginia Department of Education answering the allegations. If SCS cannot respond within 10 days to gather all of the evidence, SCS will contact the VDOE and ask for an extension of an additional 7 business days to compile a report and submit evidence. In answering the complaint SCS may pull from a variety of sources to prepare a response to the VDOE including, but not limited to:
  - a. information from school administrators, special education and/or general education teachers;
  - b. Eligibility Determination
  - c. Evaluation data to include:
    - (1) Testing:
      - (a) SOL or Alternate Assessments
      - (b) Achievement Testing
      - (c) Psychological Testing
    - (2) Medical Reports
    - (3) IEE
  - d. IEP
  - e. Accommodations and/or Modifications
  - f. Transition Services
  - g. Program and Services
  - h. Documentation pertaining Communication
  - i. Meeting Notices
  - j. Parent Participation
3. The Virginia Department of Education shall review the complaint and reply filed by the SCS to determine if further investigation or corrective action needs to be taken.
  - a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:
    - (1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
    - (2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

- b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.
  - c. The Virginia Department of Education shall resolve a complaint alleging that SCS has failed to implement a due process hearing decision.
- 4. During the course of the investigation, the Virginia Department of Education shall:
  - a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.
  - b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
  - c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.
    - (1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.
    - (2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.
    - (3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.
  - d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:
    - (1) Technical assistance activities;
    - (2) Negotiations; and
    - (3) Corrective actions to achieve compliance.
  - e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.
  - f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the SCS to bring it into compliance with applicable timelines.
- 5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:
  - a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and
  - b. Appropriate future provision of services for all children with disabilities.

- E. SCS has the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.
- F. SCS develops a plan of action to correct the violations; the plan will include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and will be subject to approval of the Virginia Department of Education.
- G. If SCS does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.
- H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that SCS has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§ 22.1-214 E of the Code of Virginia)
- I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. (34 CFR 300.151)

## DUE PROCESS HEARING 8VAC20-81-210.

### 8VAC20-81-210. Due Process Hearing.

- A. The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local educational agencies with respect to any matter relating to the: (§ 22.1-214 of the Code of Virginia; 34 CFR 300.121 and 34 CFR 300.507 through 34 CFR 300.518)
1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;
  2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
  3. Educational placement and services of the child; and
  4. Provision of a free appropriate public education to the child.
- B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.
- C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.
- D. The Virginia Department of Education establishes procedures for:
1. Providing special education hearing officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.
  2. Establishing the number of special education hearing officers who shall be certified to hear special education due process cases.
    - a. The Virginia Department of Education shall review annually its current list of special education hearing officers and determine the recertification status of each hearing officer.
    - b. Notwithstanding anything to the contrary in this subdivision, individuals on the special education hearing officers list on the effective date of this regulation shall be subject to the Virginia Department of

Education's review of recertification status based on past and current performance.

- c. The ineligibility of a special education hearing officer continuing to serve in this capacity shall be based on the factors listed in subdivision 3 c of this subsection.
3. Evaluation, continued eligibility, and disqualification requirements of special education hearing officers:
  - a. The Virginia Department of Education shall establish procedures for evaluating special education hearing officers.
  - b. The first review of the recertification status of each special education hearing officer will be conducted within a reasonable time following the effective date of these regulations.
  - c. In considering whether a special education hearing officer will be certified or recertified, the Virginia Department of Education shall determine the number of hearing officers needed to hear special education due process cases, and consider matters related to the special education hearing officer's adherence to the factors in subdivision H 5 of this section, as well as factors involving the special education hearing officer's:
    - (1) Issuing an untimely decision, or failing to render decision within regulatory time frames;
    - (2) Unprofessional demeanor;
    - (3) Inability to conduct an orderly hearing;
    - (4) Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;
    - (5) Improper ex parte contacts;
    - (6) Violations of due process requirements;
    - (7) Mental or physical incapacity;
    - (8) Unjustified refusal to accept assignments;
    - (9) Failure to complete training requirements as outlined by the Virginia Department of Education;
    - (10) Professional disciplinary action; or
    - (11) Issuing a decision that contains:
      - (a) Inaccurate appeal rights of the parents; or
      - (b) No controlling case or statutory authority to support the findings.
  - d. When a special education hearing officer has been denied certification or recertification based on the factors in subdivision 3 c of this section, the Virginia Department of Education shall notify the special education hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia that the hearing officer is no longer certified to serve as a special education hearing officer. Upon notification of denial of certification or recertification, the hearing officer may, within 10 calendar days of the postmark of the letter of notification, request of the Superintendent Department of Education 8VAC20-81 Special Education Regulations 104 of Public Instruction, or his designee, reconsideration of the decision. Such request shall be in writing and shall contain any additional information desired for consideration. The Superintendent of Public Instruction, or his



designee, shall render a decision within 10 calendar days of receipt of the request for reconsideration. The Virginia Department of Education shall notify the hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia of its decision.

4. Reviewing and analyzing the decisions of special education hearing officers, and the requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.

**E. Filing the request for a due process hearing.** If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507 (a) and 34 CFR 300.511(e) and (f))
  - a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or
  - b. The local educational agency withheld information that it was required to provide under the IDEA.
2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a local educational agency may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))
3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)
  - a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or
  - b. Any decision regarding placement under the disciplinary procedures.
4. In circumstances involving disciplinary actions, the local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)

**F. Procedure for requesting a due process hearing.** (34 CFR 300.504(a)(2), 34 CFR 300.507, 34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.



- a. If the local educational agency initiates the due process hearing, the local educational agency shall advise the parent(s) and the Virginia Department of Education in writing of this action.
  - b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and forward a copy of the request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.
  - c. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.
2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:
  - a. The name of the child;
  - b. The address of the residence of the child (or available contact information in the case of a homeless child);
  - c. The name of the school the child is attending;
  - d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
  - e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.
3. The due process notice shall be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.
4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the special education hearing officer within 15 calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.
5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.
6. The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.
7. The local educational agency shall upon receipt of a request for a due process hearing, inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. The local educational agency also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

**G. Amendment of due process notice. (34 CFR 300.508(d)(3))**

1. A party may amend its due process notice only if:

- a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or
  - b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.
2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

**H. Assignment of the special education hearing officer. (34 CFR 300.511)**

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:
  - a. The local educational agency shall contact the Supreme Court of Virginia for the appointment of the special education hearing officer.
  - b. The local educational agency contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.
2. Upon request, the Virginia Department of Education shall share information on the qualifications of the special education hearing officer with the parent(s) and the local educational agency.
3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.
  - a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an affidavit with the Executive Secretary of the Supreme Court of Virginia. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.
  - b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request in accordance with its procedures.
  - c. If a special education hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another special education hearing officer is promptly appointed.
4. A hearing shall not be conducted by a person who:
  - a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;
  - b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer; or

- c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.
- 5. A special education hearing officer shall:
  - a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;
  - b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
  - c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- I. Duration of the special education hearing officer's authority.
  - 1. The special education hearing officer's authority begins with acceptance of the case assignment.
  - 2. The special education hearing officer has authority over a due process proceeding until:
    - a. Issuance of the special education hearing officer's decision; or
    - b. The Supreme Court of Virginia revokes such authority by removing or disqualifying the special education hearing officer.
- J. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR 300.533)
  - 1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise;
  - 2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;
  - 3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;
  - 4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;
  - 5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or
  - 6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

**K. Rights of parties in the hearing.** (§ 22.1-214 C of the Code of Virginia; 34 CFR 300.512)

1. Any party to a hearing has the right to:
  - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
  - b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;
  - c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
  - d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and
  - e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.
2. Additional disclosure of information shall be given as follows:
  - a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and
  - b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
3. Parental rights at hearings.
  - a. A parent(s) involved in a hearing shall be given the right to:
    - (1) Have the child who is the subject of the hearing present; and
    - (2) Open the hearing to the public.
  - b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), even though the applicable appeal period has expired.

**L. Responsibilities of the Virginia Department of Education.** The Virginia Department of Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)

1. Maintain and monitor the due process hearing system and establish procedures for its operation;
2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;
3. Develop and disseminate a model form to be used by the parent(s) to give notice in accordance with the contents of the notice listed in subdivision F 2 of this section;
4. Maintain and ensure that each local educational agency maintains a list of persons who serve as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;

5. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information;
6. Review and approve implementation plans filed by local educational agencies pursuant to the hearing officer decisions in hearings that have been fully adjudicated; and
7. Ensure that noncompliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

**M. Responsibilities of the parent.** In a due process hearing, the parent(s) shall: (34 CFR 300.512)

1. Decide whether the hearing will be open to the public;
2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;
3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
4. Provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the special education hearing officer.

**N. Responsibilities of the local educational agency.** The local educational agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)

1. Maintain a list of the persons serving as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;
2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;
3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s') first request for a due process hearing in a school year;
4. Inform the parent(s) at the time the request is made of the availability of mediation;
5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;
6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;
7. Make timely and necessary responses to the special education hearing officer;
8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;

10. Provide documents and exhibits necessary for the hearing within required timelines;
11. Comply with timelines, orders, and requests of the special education hearing officer;
12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;
13. Forward all necessary communications to the Virginia Department of Education and parties as required;
14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the parent(s) or the local educational agency;
15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed;
16. Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s), within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.
  - a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.
  - b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.
  - c. The implementation plan:
    - (1) Must be based upon the decision of the hearing officer;
    - (2) Shall include the revised IEP if the decision affects the child's educational program; and
    - (3) Shall contain the name and position of a case manager in the local educational agency charged with implementing the decision; and
17. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.

O. Responsibilities of the special education hearing officer. The special education hearing officer shall: (34 CFR 300.511 through 34 CFR 300.513; and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing.

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The special education hearing officer shall send copies of correspondence to the parties or their attorneys.
3. Conduct a prehearing conference via a telephone conference call or in person unless the special education hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference.
4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference.
5. At the prehearing stage:
  - a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case;
  - b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute; and
  - c. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court.
6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines.
7. Ascertain from the parent(s) whether the hearing will be open to the public.
8. Ensure that the parties have the right to a written or, at the option of the parent(s), an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision.
9. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing.
10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8VAC20-81-220 when the parent(s) or guardian is not available or cannot be located.
11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing.
12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request.



13. Base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations.
14. Report findings of fact and decisions in writing to the parties and their attorneys and the Virginia Department of Education. If the hearing is an expedited hearing, the special education hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held.
15. Include in the written findings:
  - a. Findings of fact relevant to the issues that are determinative of the case;
  - b. Legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;
  - c. An explanation of the basis for the decision for each issue that is determinative of the case; and
  - d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision.
16. Subject to the procedural determinations described in subdivision 17 of this subsection, the decision made by a special education hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:
  - a. Impeded the child's right to a free appropriate public education;
  - b. Significantly impeded the parent's(s') opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
  - c. Caused a deprivation of educational benefits. Nothing in this subdivision shall be construed to preclude a special education hearing officer from ordering a local educational agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536.
18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case.
19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

P. Authority of the special education hearing officer. The special education hearing officer has the authority to: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;
2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;



3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:
  - a. The special education hearing officer shall rule on any party's motion to subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.
  - b. The special education hearing officer or a party may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.
  - c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;
4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;
5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;
6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;
7. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the special education hearing officer determines that the best interests of the child will be served;
8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8VAC20-81-170;
- 9.a. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education.
- b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension;
10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;
11. Set guidelines regarding media coverage if the hearing is open to the public;

12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and
13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.
  - a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.
  - b. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process:
    - (1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and
    - (2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.
  - c. Once a determination is made, the special education hearing officer may:
    - (1) Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or
    - (2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

**Q. Timelines for nonexpedited due process hearings.** (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.
  - a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:
    - (1) Includes a representative of the local educational agency who has decision making authority on behalf of the local educational agency; and
    - (2) May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.
  - b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the

opportunity to resolve the dispute that is the basis for the due process request.

- c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:
  - (1) The parent and the local educational agency agree in writing to waive the meeting; or
  - (2) The parent and the local educational agency agree to use the mediation process described in this chapter.
- d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.
- e. The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting.

**2. Resolution period.**

- a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.
- b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.
- c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.
- d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the provision in 8VAC20-81-110 E 4), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.
- e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

**3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:**

- a. Both parties agree in writing to waive the resolution meeting;
- b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or

- c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.
- 4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:
  - a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and
  - b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.
- 5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4 of this subsection, a party may void the agreement within three business days of the agreement's execution.
- 6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision 3 of this subsection:
  - a. A final decision is reached in the hearing; and
  - b. A copy of the decision is mailed to each of the parties.
- 7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.
- 8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.
- 9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.

**R. Timelines for expedited due process hearings. (34 CFR 300.532(c))**

- 1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.
- 2. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:
  - a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint.
  - b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
  - c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.
- 3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

**S. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)**

1. The costs of an independent educational evaluation ordered by the special education hearing officer, special education hearing officer, court reporters, and transcripts are shared equally by the local educational agency and the Virginia Department of Education.
2. The local educational agency is responsible for its own attorneys' fees.
3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.
4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.
5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8VAC20-81-310.

**T. Right of appeal. (34 CFR 300.516) 300.516; § 22.1-214 D. of the Code of Virginia)**

1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Act without regard to the amount in controversy.
2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.
3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection J of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.
4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.

**U. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34CFR 300.516)**

## **SCS Due Process - Process and Procedures**

**For this section parent may also refer to parent representative such as legal representation or advocate.**

**Due Process.** The Virginia Department of Education is responsible for the operation of the due process system; however, SCS shares responsibility for the hearing process by ensuring the timely appointment of officers, communicating with the Virginia Department of Education, assisting with the hearing, and implementing the hearing officer's decision. A hearing officer's decision may be appealed directly to any state court of competent jurisdiction or to a district court of the United States.

### **A. Basis for Due Process Hearing Request**

1. Only the parent(s) or the parent(s) representative and SCS may request a due process hearing when a disagreement arises regarding any of the following:
  - a. Identification of a child with a disability;
  - b. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
  - c. Educational placement and services of the child; and
  - d. Provision of a free appropriate public education to the child.
2. SCS may initiate a due process hearing to resolve a disagreement when the parent or parents withhold consent for an action that requires parental consent to provide services to a child who has been identified as a child with a disability or who is suspected of having a disability.
3. In circumstances involving disciplinary actions, the parent(s) of a child with a disability may request an expedited due process hearing if the parent or parents disagree with:
  - a. A determination that the child's behavior was not a manifestation of the child's disability; or
  - b. Any decision regarding placement under the disciplinary procedures.
4. SCS may request an expedited hearing if SCS maintains that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative setting) during the pendency of the due process proceedings.

### **B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.**

### **C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of**

the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.

- D. The VDOE establishes procedures for providing special education law and regulations (refer Special Education Federal Regulations 8VAC20-81-210).
- E. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.
1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507 (a) and 34 CFR 300.511(e) and (f))
    - a. SCS specifically misrepresented that it had resolved the issues identified in the request; or
    - b. SCS withheld information that it was required to provide under the IDEA.
  2. SCS may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, SCS may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))
  3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)
    - a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or
    - b. Any decision regarding placement under the disciplinary procedures.
  4. In circumstances involving disciplinary actions, SCS may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)
- F. Procedure for Requesting a Due Process Hearing
1. A request for a hearing must be made in writing to the Virginia Department of Education. The requesting party must deliver a copy of the complaint to the other party at the same time the DOE is notified. A party filing a request for a due process hearing may, but is not required to, use VDOE's model request for due process hearing form. However, to be considered sufficient, the due process hearing request must contain all required elements. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education must immediately notify SCS by telephone or by facsimile and forward a copy of the request to SCS as soon as is reasonably possible of the Virginia Department of Education's receipt,



including those cases where mediation is requested. The request for a hearing must be kept confidential by SCS and the Virginia Department of Education. The request for a hearing will be kept confidential by both SCS and the VDOE.

2. A notice requesting a due process hearing must be provided to the other party and to VDOE, and it must include the following elements.
  - a. the names and address of the child's residence,
  - b. the name of the school the child is attending,
  - c. a description of the nature of the problem of the child, including the facts relating to the problem, and
  - d. a proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.
  - e. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the due process complaint notice, unless the other party agrees otherwise.
  - f. In the case of a homeless child or youth of the McKinney-Vento Homeless Act, available contact information for the child, and the name of the school the child is attending.
3. SCS must upon receipt of a request for a due process hearing, inform the parent or parents of the availability of mediation and of any free or low-cost legal and other relevant services available in the area. SCS must also provide the parent or parents with a procedural safeguards notice.
4. SCS will work with the parent(s) to come to a resolution, prior to going to due process, about which the complaint filed upon.

**G. Amendment of Due Process**

1. A party may amend its due process notice only if:
  - a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or
  - b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.
2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

**H. Assignment of the Special Education Hearing Officer**

1. SCS contacts the Supreme Court of Virginia to secure the name of a hearing officer. Upon request the VDOE will provide the credentials of the hearing officer to either the parent or SCS.
2. SCS contacts the hearing officer within 5 business days to confirm availability, and upon acceptance, appoints the hearing officer in writing, with a copy to the parent and the VDOE. In the case of an expedited hearing, SCS must appoint the hearing officer within three business days of the request for a hearing.



3. SCS or the parent has 5 business days to object to the Hearing officer appointed to hear the complaint.
  - a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an affidavit with the Executive Secretary of the Supreme Court of Virginia. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.
  - b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request in accordance with its procedures.
  - c. If a special education hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another special education hearing officer is promptly appointed.
  - d. A hearing officer will not be appointed if he/she has either a personal or professional interest that would conflict with that person's objectivity in the hearing, is an employee of the VDOE or SCS, represents schools or parents in matter involving special education , or is an employee of any parent rights or disability rights organization.
- I. Duration of Special Education Hearing Officer's Authority.
  1. A hearing Officer's authority begins with acceptance of the case and lasts until a decision is reached, or
  2. the Supreme Court of Virginia revokes such authority by removing the hearing officer.
- J. Child's status during administrative or judicial proceedings.
  1. During the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise;
  2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;
  3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;
  4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;
  5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or
  6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and

the parent consents to the initial provision of special education and related services, SCS will provide those special education and related services that are not in dispute between the agency and the school division.

**K. Rights of parties in the hearing.**

1. Any party to a hearing has the right to:
  - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
  - b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;
  - c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least **five business days** before the hearing;
  - d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and
  - e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.
2. Additional disclosure of information shall be given as follows:
  - a. At **least five business days** prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and
  - b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
3. Parental rights at hearings.
  - a. A parent(s) involved in a hearing shall be given the right to:
    - (1) Have the child who is the subject of the hearing present; and
    - (2) Open the hearing to the public.
  - b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), even though the applicable appeal period has expired.

**L. Responsibilities of the VDOE (refer to Regulations Governing Special Education Programs for Children with Disabilities in Virginia 8VA20-81-210 Due Process Hearing).**

**M. Responsibilities of the Parent**

In a due process hearing, the parent(s) must:

1. Decide whether the hearing must be open to the public;
2. Make timely and necessary responses to the hearing officer personally or through counsel or other authorized representatives;
3. Assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;

4. Provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the hearing officer.

**N. Responsibilities of SCS**

1. Maintains a list of persons who serve as special education hearing officers. This list includes a statement of the qualifications of each special education hearing officer.
2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;
3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s') first request for a due process hearing in a school year;
4. Inform the parent(s) at the time the request is made of the availability of mediation;
5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;
6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;
7. Make timely and necessary responses to the special education hearing officer;
8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
10. Provide documents and exhibits necessary for the hearing within required timelines;
11. Comply with timelines, orders, and requests of the special education hearing officer;
12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;
13. Forward all necessary communications to the Virginia Department of Education and parties as required;
14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the parent(s) or the local educational agency;
15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed;
16. Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s), within **45 calendar days** of the hearing officer's decision in hearings that have been fully adjudicated.
  - a. If the decision is appealed or if SCS is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and

- submission of implementation plan is held in abeyance pursuant to the appeal proceedings.
- b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.
  - c. The implementation plan:
    - (1) Must be based upon the decision of the hearing officer;
    - (2) Will include the revised IEP if the decision affects the child's educational program; and
    - (3) Will contain the name and position of a case manager in the local educational agency charged with implementing the decision; and
17. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.
18. Appoint a surrogate parent when the parent(s) or guardian is not available or cannot be located.

**O & P. Responsibilities & Authority of Hearing Officer** (found in the Special Education Regulations 2009 8VAC20-81-210)

**Q. Timelines for Nonexpedited Due Process Hearings.**

- 1. Resolution meeting.
  - a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:
    - (1) Includes a representative of SCS who has decision making authority on behalf of the local educational agency; and
    - (2) May not include an attorney of SCS unless the parent is accompanied by an attorney.
  - b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process request.
  - c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:
    - (1) The parent and SCS agree in writing to waive the meeting; or
    - (2) The parent and the local educational agency agree to use the mediation process described in this chapter.
  - d. The parent and SCS determine the relevant members of the IEP Team to attend the meeting.
  - e. The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that

requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting.

**2. Resolution period.**

- a. If SCS has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.
- b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.
- c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.
- d. If SCS is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the provision in 8VAC20-81-110 E 4), SCS may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.
- e. If SCS fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

**3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:**

- a. Both parties agree in writing to waive the resolution meeting;
- b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or
- c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

**4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:**

- a. Signed by both the parent and a representative of SCS who has the authority to bind SCS; and
- b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.

**5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4 of this subsection, a party may void the agreement within three business days of the agreement's execution.**

**6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under**

subdivision 2 or the adjusted time periods described in subdivision 3 of this subsection:

- a. A final decision is reached in the hearing; and
  - b. A copy of the decision is mailed to each of the parties.
7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.
  8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.
  9. SCS is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.

**R. Timelines for expedited due process hearings.**

1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.
2. Unless the parents and SCS agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:
  - a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint.
  - b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
  - c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.
3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

**S. Costs of due process hearing and attorneys' fees.**

1. The costs of an independent educational evaluation ordered by the special education hearing officer, special education hearing officer, court reporters, and transcripts are shared equally by SCS and the Virginia Department of Education.
2. SCS is responsible for its own attorneys' fees.
3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.
4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.
5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in

accordance with the Act and its implementing regulations and 8VAC20-81-310.

**T. Right of appeal.**

1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Act without regard to the amount in controversy.
2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.
3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection J of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.
4. If the special education hearing officer's decision is not implemented, complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.

**U. Nothing in this chapter prohibits or limits rights under other federal laws or regulations.**

**NOTE: Nothing in this Chapter Prohibits or Limits Rights Under Other Federal Laws or Regulations**



## SURROGATE PARENT PROCEDURES

### 8 VAC 20-81-220

#### 8VAC20-81-220. Surrogate Parent Procedures.

- A. Role of surrogate parent.** The surrogate parent appointed in accordance with this section represents the child in all matters relating to the identification, evaluation, or educational placement of the child; or the provision of a free appropriate public education to the child. (34 CFR 300.519(g))
- B. Appointment of surrogate parents.**
1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if: The parent(s) or guardians are allowing relatives or private individuals to act as a parent;
  2. Unless one of the exceptions outlined in subdivision 1 of this subsection applies, the local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: (34 CFR 300.519(a))
    - a. No parent, as defined in 8VAC20-81-10, can be identified;
    - b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent;
    - c. The child is a ward of the state and either subdivision 1 a or 1 b of this subsection is also met; or
    - d. The child is an unaccompanied homeless youth as defined in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC § 11434 a(6)) and § 22.1-3 of the Code of Virginia and either subdivision 1 a or 1 b of this subsection is met.
  3. The local educational agency shall appoint a surrogate parent as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8VAC20-81-180 C 3 or C 4 and no family member is available to serve as the child's educational representative.
  4. If the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child. The appointed surrogate shall meet the requirements of subdivision E 1 c of this section. (34 CFR 300.519(c))
- C. Procedures for surrogate parents.**
1. The local educational agency shall establish procedures in accordance with the requirements of this chapter, for determining whether a child needs a surrogate parent. (34 CFR 300.519(b))
  2. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee



within 30 calendar days of the determination that a surrogate parent is necessary. (34 CFR 300.519(b) and (h))

- a. The appointment having been effected, the local educational agency shall notify in writing:
    - (1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
    - (2) The surrogate parent-appointee; and
    - (3) The person charged with responsibility for the child.
  - b. The surrogate parent serves for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.
  - c. If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.
  - d. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.
3. Each local educational agency shall establish procedures that include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:
- a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8VAC20-81-180;
  - b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;
  - c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
  - d. The parent(s), whose whereabouts were previously unknown, are now known and available; or
  - e. The appointed surrogate parent is no longer eligible according to subsection E of this section.

**D. Identification and recruitment of surrogate parents.**

1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.
2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational

agency's determination of surrogate eligibility. Other factors that warrant the local educational agency's attention include:

- a. Consideration of the appointment of a relative to serve as surrogate parent;
- b. The appropriateness of the child's participation in the selection of the surrogate parent.

**E. Qualifications of surrogate parents. (34 CFR 300.519(d), (e), and (f))**

1. The local educational agency shall ensure that a person appointed as a surrogate:
  - a. Has no personal or professional interest that conflicts with the interest of the child;
  - b. Has knowledge and skills that ensure adequate representation of the child;
  - c. Is not an employee of the Virginia Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child; and
  - d. Is of the age of majority.
2. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.
3. If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate shall otherwise meet the qualifications of a surrogate, and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.

**F. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter. (34 CFR 300.519(g)).**

**SCS Surrogate Parent – Procedures for Assignment**

- A. The special education administrator/designee for SCS will be responsible for identifying those who are willing and qualified to serve as surrogate parents.
- B. To be qualified as a surrogate parent, an individual must have no personal or professional interest that conflicts with the interest of the child, have knowledge and skills that will ensure adequate representation of the child, be of the age of majority, and not be an employee of the Virginia Department of Education, this school division, or any other agency that is involved in the education or care of the child. If otherwise qualified, a person will not be

considered to be an “employee” solely because they are paid to serve as a surrogate parent.

- C. If the child is an unaccompanied homeless youth, the special education administrator/ designee may permit appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate must meet the other qualifications for a surrogate parent, and may serve only until a surrogate parent meeting all of the qualifications for a surrogate parent can be assigned.
- D. While every effort will be made to secure individuals willing to serve as surrogates from within the (name of local educational agency), individuals from outside the (name of local educational agency) may be secured if necessary to ensure that someone qualified is available to represent the needs of the students in meetings pertaining to special education eligibility and services. In addition, others may be eligible once a need is identified, such as a child’s relative, depending on the child’s needs, and the availability of qualified persons familiar with the child and who would otherwise qualify. The special education administrator/designee may involve the child in the selection, if appropriate.
- E. When a school cannot identify or with reasonable efforts locate someone who qualifies as a “parent” in accordance with the Virginia Regulations, the school will contact the special education administrator/designee who will confirm the need for a surrogate and appoint a surrogate within 30 calendar days for the student, if one is needed. Once appointed, the child (as appropriate to the disability), the appointed surrogate parent, and the person charged with the responsibility for the child will be notified in writing that the appointment has been made. The surrogate parent will be assigned to serve for the duration of the school year unless a shorter period of time is appropriate given the content of the child’s IEP. At the end of each school year, following a review, a determination will be made regarding whether the appointment of a surrogate parent will be renewed or not. Appointments may also be extended as needed, if the child requires the services of a surrogate during the summer months.
- F. Termination of a surrogate parent will occur when the child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed in accordance with the transfer of rights procedures; when the child is no longer eligible for special education services and the surrogate parent has consented to the termination of services; when legal guardianship has transferred to a person who can serve as the parent in special education matters; when the parent whose whereabouts previously were unknown is now known and the parent is available; or when the appointed surrogate is no longer qualified.
- G. If a surrogate wants to challenge the surrogate qualifications, or if the surrogate is terminated prior to the end of the appointment and wishes to appeal the decision, a request for a hearing may be made to the division superintendent who will convene a panel which shall include a principal, a school board member, and the school board attorney who will hear evidence presented and make a decision.

## **SCS Process for Appointing a Surrogate Parent**

### **A. Role of Surrogate Parent.** The surrogate parent appointed in accordance with this section represents the child in all matters relating to:

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

### **B. Appointment of Surrogate Parent**

1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:
  - a. The natural parent or parents or guardians are allowing relatives or private individuals to act as a parent;
  - b. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.
2. A surrogate parent must be appointed for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when:
  - a. No parent, as defined in this chapter, can be identified; or
  - b. SCS, after reasonable efforts, cannot discover the whereabouts of a parent.
  - c. The child is a ward of the state and either subdivision 1a or 1b of this subsection is also met; or
  - d. If the child is an “unaccompanied homeless youth,” as defined by the McKinney-Vento Homeless Assistance Act, SCS must appoint a surrogate parent.
  - e. A surrogate parent must be appointed by SCS as the educational representative for a child who reaches the age of majority if SCS has received written notification that the child is not competent to provide informed consent, and no family member is available to serve as the child’s educational representative.
  - f. If the child is a ward of the state, the surrogate parent may be appointed by the judge overseeing the child’s care if the appointed surrogate otherwise meets the requirements.
  - g. Reasonable efforts must be made to ensure the assignment of a surrogate parent not more than 30 days after the determination that a surrogate is needed.
3. SCS’ Director of Special Education must change the assignment of a surrogate parent before that surrogate parent’s appointment has expired if any of the conditions below a, b, c, d, or e occurs. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

- a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child;
  - (1) The student would receive notice when he/she reached the age of majority that he/she act on their own behalf and that a surrogate parent was no longer needed.
  - (2) The surrogate parent would receive a notice stating that the student had reached the age of majority and could now represent themselves if the student was competent,
  - (3) If the student had been ruled incompetent, the notice would make note that a court appointed representative would now represent the child.
- b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of those services;
  - (1) The surrogate parent having participated in the meeting to determine that the student was no longer eligible would receive Eligibility documentation and Written Notice to that effect.
  - (2) The student participating in the meeting could object to termination of special education programs and services and the Eligibility Committee would then consult with both the surrogate parent and the student on options to consider:
    - (a) Review the data and documentation with both the student and surrogate parent;
    - (b) Determine whether more testing is needed; in which case the student would remain in the current placement until the evaluation was completed and a final determination rendered.
5. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
6. If the child is adopted;
7. If there is a court order;
8. If the student graduates from school with a standard or advanced studies diploma;
9. The parent or parents, whose whereabouts were previously unknown, are now known and available; or
10. The appointed surrogate parent is no longer eligible according to (Qualification of Surrogate Parents) of this section. In which case , the Director of Special Education would send a letter to the surrogate parent specifying the reason that they are no longer eligible to serve as a surrogate and their rights to either present evidence otherwise or to appeal.
  - (1) The appeal would either go to the Superintendent of SCS; or
    - (a) SCS Superintendent would review the appeal and make a decision within 10 business days.
    - (b) The response would be in writing.
  - (2) To the DOE
11. The child or surrogate parent being removed may request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment.

**C. Procedures for Appointing Surrogate Parents**

A good faith effort must be made to locate the parent or parents prior to the appointment of the surrogate parent. A letter must be mailed to the last known address and family members must be contacted if their whereabouts are known.

1. The Director of Special Education as designee for the Superintendent must determine if a child referred or eligible for special education needs a surrogate parent.
2. The following procedures must be used to identify children in SCS who are in need of a surrogate parent.
  - a. The school's licensed social worker investigates any situation in which the school is unsure if there is a parent or legal guardian in order to determine who has legal custody and who has the right and responsibility for care of the child. If the child lives with a grandparent(s), aunt, uncle, adult brother or sister, etc., they may represent the child
  - b. If SCS is contacted by a representative of Social Services that a parent(s) are not to have contact with their child(ren), court documentation would serve as notification for a need for a surrogate parent or If the child is placed in a foster home, the foster parent can represent the child.
    - (1) SCS sends Written Notice to the parent(s) or adoptive parents to the last known address of a child placed in foster care to let them know that the foster parent can attend meetings pertaining to their child and make decisions on behalf of the child and that SCS is entitled to rely upon the actions of the foster parent until the biological or adoptive parents attempts to act as the parent. Content of the notice:
      - (a) Explain the reason for the notice
      - (b) Explain the consequence for failing to respond
      - (c) Invite a response
      - (d) Provide contact information for responding
      - (e) Invite correction of information
      - (f) Document provision of notice
      - (g) Provide, basic, relevant student information
    - (2) If the biological or adopted parent(s) do not respond to the letter, the foster parent is allowed to make decisions on behalf of the child.
    - (3) The burden of coming forward lies with the biological or adoptive parent to respond to the notice provided by SCS.
    - (4) The biological or adoptive parent has 15 days from proof of mailing to reply. If no reply is received, SCS will proceed with the involvement of the foster parent. Method of delivery may be:
      - (a) Certificate of mailing
      - (b) Hand-delivery
      - (c) E-mail
      - (d) First Class, postage pre-paid

- c. Any court order of legal jurisdiction must be honored in the determination of need for a surrogate parent; the court order must be placed in the child's record at school.
  - d. Documentation of termination of parental rights must serve as evidence that a surrogate parent is needed. This document must remain in the child's file.
- 3. The appointment having been effected, SCS notifies in writing:
  - a. The child with a disability, aged two to 21, inclusive, as appropriate to the disability the name of the surrogate parent;
  - b. The surrogate parent-appointee must be notified of the appointment and given the child's name and school of attendance;
  - c. The person charged with responsibility for the child is notified of the appointment of the surrogate parent; and
  - d. The custodial state agency charged with responsibility for the child is notified.
- 4. The surrogate parent must serve during, or for the duration of, the school year for which the surrogate parent is appointed.
  - a. When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent must be appointed to serve for the duration of the child's IEP.
  - b. If the child requires the services of a surrogate parent during the summer months, SCS must extend the appointment as needed, consistent with timelines required by law.
  - c. At the end of each school year, the appointment of surrogate parents is renewed or not renewed following a review by SCS.

#### **D. Identification and Recruitment of Surrogate Parents**

- 1. SCS develops and maintains a list of individuals within its jurisdiction who are qualified to serve as surrogate parents on an as need basis. Once it is determined that a child needs a surrogate parent, candidates are contacted to determine their willingness to serve. Once the person agrees to serve, they will then be trained and be placed on a list.
- 2. The needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify must be considered in SCS' determination of surrogate parent eligibility. Other factors which warrant SCS' attention are as follows:
  - a. Consideration of the appointment of a relative to serve as surrogate parent;
  - b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;
  - c. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and
  - d. The appropriateness of the child's participation in the selection of the surrogate parent.

#### **E. Qualifications of Surrogate Parents**

- 1. SCS must ensure that a person appointed as a surrogate:
  - a. Has no interest that conflicts with the interest of the child;

- b. **Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed SCS' approved training session prior to representing the child. Thereafter, SCS must provide annual training, as necessary, for surrogate parents to ensure that they possess knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively. Training may consist of:**
  - (1) A brief history of legislation regarding the education of disabled children, including reference to IDEA and Section 504.**
  - (2) Definition and description of disabled children and the concept of educational disabilities must be emphasized.**
  - (3) The need for a surrogate parent to act as an independent advocate for the child's best educational interests must be stressed.**
  - (4) Emphasis must be placed on the concept that surrogate parents serve in a quasi-legal position and represent children only for educational purposes. They do not have the overall authority of legal guardians.**
  - (5) The rights of all parents—natural and surrogate—must be explained. Emphasis must be placed on the responsibilities of each team and that while natural parents may abdicate certain responsibilities when it comes to the education of the child, surrogate parents may not.**
  - (6) Local procedures in the referral and evaluation process must be explained, including timelines and triennial reevaluations.**
  - (7) Strong emphasis must be placed on the IEP, including the legal status, content and meetings.**
  - (8) Surrogate parents must have an understanding of the different programs and services available to the child.**
- c. **Is not an employee of the Virginia Department of Education, or any other agency which is involved in the education or care of the child;**
- d. **Is of the age of majority;**
- e. **Resides in the same general geographic area as the child, whenever possible.**
- 2. **SCS may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the above standards.**
- 3. **A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.**
- 4. **If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate shall otherwise meet the qualifications of a surrogate, and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.**



- F. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter. As such, the surrogate parent has the same rights to request a due process hearing or go to mediation.

**LOCAL EDUCATIONAL AGENCY ADMINISTRATION AND  
GOVERNANCE  
8 VAC 20-81-230**

**8VAC20-81-230. Local Educational Agency Administration and Governance**

- A. The local educational agency shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.**
- B. Plans, applications, and reports.** (§ 22.1-215 of the Code of Virginia; 34 CFR 300.200 and 34 CFR 300.212)
- 1. The local educational agency shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:**
    - a. Assurances that the local educational agency has in effect policies and procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;(refer to 8 VAC 20-81-30 A)**
    - b. A report indicating the extent to which the annual plan for the preceding period has been implemented;**
    - c. Budgets outlining the use of the federal funds; and**
    - d. Any revisions to the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision G 2 of this section.**
  - 2. Prior to submission to the Virginia Department of Education, the annual plan shall be reviewed by the local school division's local advisory committee, and approved by the local school board. State-operated programs and the Virginia School for the Deaf and the Blind at Staunton shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.**
  - 3. The local educational agency shall ensure that the annual plan, and all required special education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.**
- C. Provision of or payment for special education and related services.** (34 CFR 300.154(b))
- 1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary**

for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.

2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21 of 8VAC20-81-20.

D. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent.

1. Membership.

- a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.
- b. The committee shall include one teacher.
- c. Additional local school division personnel shall serve only as consultants to the committee.

2. The functions of the local advisory committee shall be as follows:

- a. Advise the local school division of needs in the education of children with disabilities;
- b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;
- c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;
- d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;
- e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and
- f. Participate in the review of the local school division's annual plan, as outlined in subdivision B 2 of this section.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

4. Committee meetings shall be held at least four times in a school year and shall be open to the public.

E. Regional special education programs. (§ 22.1-218 of the Code of Virginia; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.
2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.
3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.

**F. Transition from infant and toddler programs to early childhood special education programs. (34 CFR 300.124)**

1. Children who are participating in early intervention programs under Part C of the Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.
2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with § 1437(a)(9) of the Act, and its federal implementing regulations.
3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:
  - a. The child meets the Part B eligibility criteria; and
  - b. An IEP has been developed and signed by the parent(s).

**G. Programs for children with disabilities in regional or local jails. (34 CFR 300.101 and 34 CFR 300.102)**

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.
2. Each local school division with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of any revisions to this agreement shall be submitted with the annual plan specified in subsection B of this section.

- H. Each local educational agency shall cooperate with the U.S. Department of Education's efforts under § 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)
- I. Early Intervening Services. Each local educational agency shall implement early intervening services in accordance with the provisions of 8VAC20-81-260 H. (34 CFR 300.226)
- J. Access to instructional materials.
1. Each local educational agency shall ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))
  2. To meet the requirements of subdivision 1 of this subsection for blind persons or other persons with print disabilities, the local educational agency may coordinate with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))
    - a. The local educational agency shall provide an assurance to the Virginia Department of Education that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.
    - b. Each local educational agency shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.
    - c. If the local educational agency coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:
      - (1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
      - (2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
    - d. The requirements of subdivision J 2 c of this section shall apply to print instructional materials published after July 19, 2006.
  3. Nothing in this subsection relieves a local educational agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))
  4. Definitions applicable to this subsection.

- a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.
- b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2 USC § 135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))
  - (1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;
  - (2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;
  - (3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or
  - (4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.
- c. The term "competent authority" is defined as follows: (2 USC § 135a; 36 CFR 701.6(b)(2))
  - (1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).
  - (2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.
- d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or the local educational agency for use by students in the classroom. (20 USC § 1474(e)(3)(C))
- e. The term "specialized formats" has the meaning given the term in 17 USC § 121(d)(3), and means Braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC § 1474(e)(3)(D); 34 CFR 300.172(e))

## **SCS Administration and Governance – Process and Procedures**

- A. Rights and Protections.** SCS must ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.
- B. Plans, Applications, and Reports**
1. SCS prepares and submits to the Virginia Department of Education, policies and procedures for the provision of special education and related services that comply with all sections of this chapter and other relevant federal and state laws and regulations and any revisions to such policies and procedures. SCS submits the policies and procedures and the revisions to the policies and procedures to the school board for approval. The policies and procedures include:
    - a. An application for funding under Part B of the Individuals with Disabilities Education Act containing assurances of compliance in accordance with the requirements of the Act and the procedures outlined by the Virginia Department of Education.
    - b. Progress toward meeting the goals for the performance of children with disabilities.
  2. SCS also ensures that all required special education policies and procedures and the revisions to those policies and procedures necessary for ensuring a free appropriate public education to a child are available for public inspection. SCS posts the Special Education Policies and Procedures on SCS website as well as 504 Policies and Procedures. These policies are also available at parent request.
    - a. In the spring of each year the Special Education Advisory Committee meets to determine what needs the special education program has, what successes the program has seen, and writes a report.
    - b. Members of the Special Education Advisory Committee presents their report to the school board.
    - c. The Special Education Advisory Committee approves the Annual Plan annually, which includes:
      - (1) Budget
      - (2) Policies
      - (3) Procedures
      - (4) Forms
      - (5) Any revisions to meet the requirements of the law and regulations
    - d. Once the Annual Plan is approved by the Special Education Advisory Committee, the plan is then presented to the school board for approval by the Director of Special Education (generally at the same meeting when the Special Education Advisory Committee submits their report to the board).
- C. Provision of/or Payment for Special Education and Related Services**

1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.
  2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, SCS must provide or pay for the services to the child in a timely manner. SCS may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency must reimburse SCS in accordance with the terms of the interagency agreement described in 8 VAC 20-80-30.
- D. Local Advisory Committee SCS's local advisory committee for special education, appointed by each local school board annually, advises the school board through the division superintendent.
1. Membership.
    - a. SCS encourages parents of children with disabilities or individuals with disabilities to serve on the Special Education Advisory Committee
    - b. SCS's committee include one teacher and parents.
    - c. Additional local school division personnel serves only as consultants to the committee.
  2. The functions of the local advisory committee are as follows:
    - a. Advise the local school division of needs in the education of children with disabilities;
    - b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;
    - c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;
    - d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;
    - e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and
    - f. Participate in the review of the local school division's annual plan, as outlined in subdivision B 2 of this section.
  3. Public notice is published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.
  4. Committee meetings are held at least four times in a school year and are open to the public.



**E. Regional Special Education Programs. (§ 22.1-218 of the Code of Virginia; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))** SCS does not participate in any regional special education programs.

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.
2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.
3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.

**F. Transition from Infant and Toddler Programs to Early Childhood Special Education Programs**

1. Children who are participating in early intervention programs under Part C of the Individuals with Disabilities Education Act and who must participate in preschool programs under Part B must be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.
2. SCS must participate in transition planning conferences when notified by the designated local Part C early intervention agency. (not less than 90 days and not more than nine months before the child is eligible for preschool services.
3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:
  - a. The child meets the Part B eligibility criteria; and
  - b. An IEP has been developed and signed by the parent(s).

**G. Programs for Children with Disabilities in Regional or Local Jails**

1. SCS having a local jail in its jurisdiction is responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 days.
  - d. SCS provides a special education teacher to meet the needs of students incarcerated at the Duffield Regional Jail. The regional jail serves students 18 years of age and older.

- e. SCS offers special education programs and services to incarcerated students until they turn 22 years of age or graduate with a standard or advanced studies diploma. Students are offered special education services and have the right to accept or deny special education.
  - f. SCS reviews records from the student's previous school as any other transfer student.
    - (1) If records are current and up-to-date, the student immediately receives special education.
    - (2) If the information is not current, SCS will treat the student as any new referral and start the referral process.
  - 2. SCS has established an interagency agreement with Duffield Regional Jail. The interagency agreement addresses staffing and security issues associated with the provision of special education and related services in the jail. A copy of this agreement is submitted with the policy and procedures specified in subsection.
- H. SC cooperates with the U.S. Department of Education's efforts under § 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)**
- I. Early Intervening Services. SCS implement early intervening services in accordance with the provisions of 8VAC20-81-260 H. (34 CFR 300.226)**
- J. Access to instructional materials.**
- 1. SCS ensures that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))
  - 2. To meet the requirements of subdivision 1 of this subsection for blind persons or other persons with print disabilities, SCS coordinates with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))
    - a. SCS provides an assurance to the Virginia Department of Education that SCS will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.
    - b. SCS informs the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.
    - c. SCS coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:
      - (1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

- (2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
- d. The requirements of subdivision J 2 c of this section shall apply to print instructional materials published after July 19, 2006.
3. Nothing in this subsection relieves SCS of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))
4. Definitions applicable to this subsection.
- a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.
- b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2 USC § 135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))
- (1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;
- (2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;
- (3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or
- (4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.
- c. The term "competent authority" is defined as follows: (2 USC § 135a; 36 CFR 701.6(b)(2))
- (1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).
- (2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.
- d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or SCS for use by students in the classroom. (20 USC § 1474(e)(3)(C))
- e. The term "specialized formats" has the meaning given the term in 17 USC § 121(d)(3), and means Braille, audio, or digital text that is

**exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC § 1474(e)(3)(D); 34 CFR 300.172(e))**

**PART IV \_ FUNDING  
ELIGIBILITY FOR FUNDING  
8 VAC 20-81-240**

**SCS- Part IV Funding**

- A. **Compliance.** SCS and state-operated program must maintain current policies and procedures and supporting documentation to demonstrate compliance with the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures shall be made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance. Revisions to policies and procedures must be approved by local school boards for local school divisions, or the Board of Visitors for the Virginia School for the Deaf and the Blind at Staunton. State-operated programs shall submit revisions to policies and procedures to the state special education advisory committee for review. (34 CFR 300.201; 34 CFR 300.220)
- B. **Disbursement.** All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

## STATE FUNDS FOR LOCAL SCHOOL DIVISIONS 8 VAC 20-81-250

### SCS – State Funds

- A. State Funds. State funds to assist SCS with the cost of providing special education and related services for children with disabilities must be provided through the Virginia Department of Education's appropriation as provided in this section.
- B. Children with Disabilities Enrolled in Programs Operated by SCS School Board:
1. Public school programs. In addition to the funds received for each pupil from state basic aid, SCS must receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality. (Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia)
  2. Homebound instruction. Subject to availability, SCS must receive funds to assist with the cost of educating children who are temporarily confined for medical or psychological reasons. Such children may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs must be reimbursed based on the composite index, the hourly rate paid to homebound teachers by SCS, and the number of instructional hours delivered. Reimbursement must be made in the year following delivery of instruction. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))
- C. Children with Disabilities Enrolled in Regional Special Education Programs: (Virginia Appropriation Act; § 22.1-218 of the Code of Virginia)
1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the superintendent of Public Instruction or designee.
  2. Such reimbursement must be in lieu of the state per pupil basic aid otherwise available for each child.
- D. Applicability of least restrictive environment and FAPE provision in state-funded placements. No state-funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise result in a failure to provide a child with a disability a free appropriate public education. (34 CFR 300.114(b))

**E. Children with Disabilities Receiving Special Education and Related Services in Regional or Local Jails.** SCS is be reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails.

**F. Funds Under the Comprehensive Services Act for At-Risk Youth and Families**

1. Funds are available under the Comprehensive Services Act to support the cost of:
  - a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;
  - b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and
  - c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.
2. SCS is responsible for payment of transportation expenses associated with implementing the child's IEP.
3. Comprehensive Services Act reimbursement requirements must be applicable.
4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, SCS is not be responsible for the cost of the placement. If a hearing officer or court determines that such placement, rather than the IEP proposed by SCS, is appropriate and no appeal is perfected from that decision, SCS is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

**G. Reimbursement shall be made for the education of children with disabilities who: (§ 22.1-101.1 B and C of the Code of Virginia)**

1. Have been placed in foster care or other custodial care within the geographical boundaries SCS Division by a Virginia agency;
2. Have been placed in an orphanage or children's home, which exercises legal rights; or
3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child caring institution or group home licensed in accordance with the Code of Virginia.

## FEDERAL FUNDS

### 8 VAC 20-81-260

#### SCS – Federal Funds

- A. In accordance with the provisions of the Act, the Virginia Department of Education disburses the federal funds that are available under Part B of the Act to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. SCS submits an annual plan to the Virginia Department of Education describing the use of such funds in accordance with subsection B of 8VAC20-81-230. (34 CFR 300.200; 34 CFR 76.301)
- B. Excess costs means those costs that are in excess of the average annual per student expenditure in SCS during the preceding school year for an elementary school or secondary school student as may be appropriate, and that shall be computed after deducting: (34 CFR 300.16, 34 CFR 300.202 and Appendix A to 34 CFR Part 300)
1. Amounts received under Part B of the Act;
  2. Amounts received under Part A of Title I of the ESEA;
  3. Amounts received under Parts A and B of Title III of the ESEA; or
  4. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1, 2, or 3 of this subsection but excluding any amounts for capital outlay and debt service. SCS meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities in state and local funds before funds under Part B of the Act are used. (See 34 CFR Part 300, Appendix A for an example of how excess costs shall be calculated.)
- C. SCS complies with the maintenance of effort requirement in establishing its eligibility for an award in a fiscal year if SCS budgets the same total or per capita amount in state and local funds as it spent from the same sources to educate children with disabilities in the most recent prior year for which information is available. (34 CFR 300.203)
- D. Part B funds may be used to supplement, but shall not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Act. (34 CFR 300.202 through 34 CFR 300.204)



- E. The amount of Part B funds determined to be available for SCS based upon the formulas specified under the Act. (34 CFR 300.705 and 34 CFR 300.816)
- F. SCS may use Part B funds to implement a schoolwide program under § 1114 of the ESEA, except that the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but SCS must ensure that all children with disabilities in schoolwide program schools: (34 CFR 300.206)
1. Receive services in accordance with a properly developed IEP; and
  2. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.
- G. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child. (34 CFR 300.208)
- H. Early intervening services. (34 CFR 300.226 and 34 CFR 300.646)
1. Children who are not currently identified as needing special education or related services may need additional academic and behavioral supports to succeed in a general education environment. These supports may be in the form of early intervening services. Early intervening services apply to children in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three.
  2. To develop and implement coordinated, early intervening services, which may include interagency financing structures, a local school division may not use more than 15% of the amount SCS receives under Part B of the Act for any fiscal year. The 15% is less any amount reduced by SCS division pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds).
  3. In implementing coordinated, early intervening services under this section, SCS may carry out activities that include:
    - a. Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
    - b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
  4. Nothing in this section shall be construed to either limit or create a right to a free appropriate public education under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
  5. SCS develops and maintains coordinated, early intervening services under this section shall annually report to the Virginia Department of Education on:

- a. The number of children served under this section who received early intervening services; and
  - b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.
- 6. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.
- 7. The amount of funds expended by SCS for early intervening services shall count toward the maximum amount of expenditures that SCS may reduce when determining compliance with the requirement for maintenance of effort.
- 8. If the Virginia Department of Education determines significant disproportionality based on race and ethnicity is occurring in a local educational agency in the identification of children with disabilities, or the placement of identified children in a particular educational setting, SCS will:
  - a. Use 15% of its Part B funds to provide comprehensive coordinated early intervening services particularly, but not exclusively, to those groups that were significantly over identified; and
  - b. Publicly report on the revision of policies, practices, and procedures used in the identification and placement of children with disabilities.
- I. If the Virginia Department of Education determines that SCS is adequately providing a free appropriate public education to all children with disabilities residing in the area served SCS with state and local funds, the department may reallocate any portion of the funds under Part B of the Act that are not needed by SCS to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve. (34 CFR 300.705 and 34 CFR 300.817)

**FUNDS TO ASSIST WITH THE EDUCATION OF CHILDREN WITH  
DISABILITIES RESIDING IN STATE-OPERATED PROGRAMS  
8 VAC 20-81-270**

**SCS – Funds to Assist the Education of Children with Disabilities/State  
Operated Facilities**

- A. **State Mental Health Facilities.** State funds for education for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education must be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount must be transferred by the Virginia Department of Education from the SCS basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)
- B. **State Training Centers for the Mentally Retarded.** State funds for special education and related services for children with disabilities in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education must be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount must be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)
- C. **State Specialized Children's Hospitals.** State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)
- D. **Woodrow Wilson Rehabilitation Center.** State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)
- E. **Regional and Local Juvenile Detention Homes.** State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR
- F. **State-Operated Diagnostic Clinics.** State funds for the employment of educational consultants assigned to child development and other specialty

clinics operated by the state Department of Health are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

- G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)
- H. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf. State funds are appropriated directly to the Virginia school to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the school must be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount must be transferred by the Virginia Department of Education from SCS's basic aid funds to the school. (Virginia Appropriation Act; 34 CFR 300.705)
- I. Regional and local jails. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

## **FUNDING, WITHHOLDING AND RECOVERY OF FUNDS**

### **8 VAC 20-81-280**

#### **SCS – Funding, Withholding, and Recovery of Funds**

- A. **Disbursement of Funds.** The Virginia Department of Education must disburse funds to SCS for the education of children with disabilities, aged two to 21, inclusive, when SCS provides documentation of compliance with state and federal laws and regulations. (34 CFR 300.200)
- B. **Documentation of Compliance.** If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction must notify SCS that state and federal funds must not be available for reimbursement for special education programs and services. (34 CFR 300.155 and 34 CFR 300.221)
1. The notification must include the substance of the alleged violation, and the SCS must be given an opportunity to submit a written response; and
  2. SCS must have the right to appeal to the Virginia Board of Education under 8 VAC 20-81-290.
- C. **Failure to Establish and Maintain Programs.** Whenever the Virginia Board of Education, in its discretion, determines that SCS fails to establish and maintain programs of free and appropriate public education that comply with the regulations established by the board, the board may withhold all state and federal funds for the education of eligible children with disabilities and may use the payments that would have been available to such local educational agency to provide special education, directly or by contract, to eligible children with disabilities in such manner as the board considers appropriate. (§ 22.1-214 E of the Code of Virginia)
- D. **Failure to Comply.** If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8VAC20-81-290, finds that SCS has failed to comply with the state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to SCS until it complies with the state and federal laws and regulations. (34 CFR 300.155 and 34 CFR 300.222)
- E. **Due Process.** If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by SCS, the foregoing due process procedures must apply. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)
- F. **Funds Improperly Received.** If it is determined that such funds have been erroneously claimed, the Virginia Department of Education must bill SCS for the amount of funds improperly received and withhold an equal amount of

state or federal funds for the following year if not repaid by SCS. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

- G. SCS in receipt of a notice, as described in subsection B of this section, shall provide public notice to SCS's jurisdiction regarding pendency of the action. (34 CFR 300.222)

**APPEAL OF ADMINISTRATIVE DECISION REGARDING FUNDING  
8 VAC 20-81-290**

**SCS Appeal of Administrative Decision Regarding Funding**

- A. Right to Appeal.** The Virginia Department of Education's recommendation to disapprove local eligibility for funding under Individuals with Disabilities Education Act, to withhold state and federal funds for special education and related services, or to disapprove rates set for the regional special education programs may be appealed by SCS. (34 CFR 76.401 and 34 CFR 300.155)
- B. Procedures for Appeal.** The procedures for the appeal of administrative decisions are as follows: (34 CFR 76.401 and 34 CFR 300.155)
1. SCS must request in writing a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;
  2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction must notify SCS in writing of the date, time, and location of the hearing;
  3. The hearing must be conducted within 15 business days from the date of notification;
  4. The hearing must be conducted by an independent hearing officer in conformance with the provisions of §§ 2.2-4020 and 2.2-4024 of the Code of Virginia;
  5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or SCS;
  6. A written or electronic verbatim record must be kept of all proceedings of the hearing;
  7. The hearing officer must review all pertinent evidence presented and must render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;
  8. No later than 10 business days after the hearing, the hearing officer must issue a written ruling, including findings of fact and reasons for the findings;
  9. The decision made by the hearing officer must be final unless an appeal is requested by SCS;
  10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department Regulations; and
  11. Notice of appeal must be filed within 20 days after SCS has been notified by the Virginia Department of Education of the results of the hearing.

## **USE OF PUBLIC OR PRIVATE INSURANCE**

### **8 VAC 20-81-300**

#### **SCS – Use of Public or Private Insurance**

##### **A. Children with Disabilities Who are Covered by Public Insurance (34 CFR 300.154(d))**

- 1. SCS may use Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public insurance program except as provided in subdivision 2 of this subsection.**
- 2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, SCS:**
  - a. Shall provide notice to the parent(s) that SCS:**
    - (1) May not require the parent or parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;**
    - (2) May not require the parent or parents to incur any out-of-pocket expense, such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with this section may pay the cost that the parent or parents otherwise would be required to pay; and**
    - (3) May not use a child's benefits under a public insurance program if that use would:**
      - (a) Decrease available lifetime coverage or any other insured benefit;**
      - (b) Result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;**
      - (c) Increase premiums or lead to the discontinuation of insurance; or**
      - (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.**
  - b. Shall obtain informed parental consent each time that access to public benefits or insurance is sought, including parental consent to release educational information to the public benefits of insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and**
  - c. Shall provide notice to the parent(s) that refusal to allow access to their public benefits or insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).**



**B. Children with Disabilities Who are Covered by Private Insurance (34 CFR 300.154(e))**

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, SCS may access a parent's private insurance proceeds only if the parent provides informed consent as defined by this chapter.
2. Each time SCS proposes to access a parent's private insurance proceeds, it must:
  - a. Obtain informed parental consent; and including parental consent to release educational information to the private insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and
  - b. Inform the parent that the refusal to permit SCS to access his private insurance does not relieve SCS of its responsibility to ensure that all required services are provided at no cost to the parent or parents.

**C. Use of Part B Funds (34 CFR 300.154(f))**

1. If SCS is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this chapter to ensure a full appropriate public education, SCS may use its Part B funds under the Individuals with Disabilities Education Act to pay for the service.
2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, SCS use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's benefits or insurance (e.g., deductible or co-pay amounts).

**D. Proceeds from Public or Private Insurance (34 CFR 80.25 and 34 CFR 300.154(g))**

1. Proceeds from public or private insurance must not be treated as program income for purposes of the Education Department General Administrative Regulations.
2. If SCS spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds must not be considered state or local funds for purposes of the maintenance of effort provisions.

**E. No Restriction Placed on Insurance Programs.**

Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public insurance program by federal law, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public insurance program. (34 CFR 300.154(h))

## ATTORNEYS' FEES 8 VAC 20-81-310

### SCS – Attorney's Fees

- A. In any action or proceeding brought under § 1415 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability who is the prevailing party. (34 CFR 300.517(a))
1. To the prevailing party who is the parent(s) of a child with a disability;
  2. To a prevailing party who is SCS or the Virginia Department of Education against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
  3. To a prevailing party who is SCS or the Virginia Department of Education against the attorney of a parent, or against the parent, if the parent's request for a due process hearing, or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
- B. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under § 1415 and Subpart E of the Act. This section does not preclude SCS from using funds under the Act for conducting an action or proceeding under § 1415 of the Act. (34 CFR 300.517(b))
- C. A court must award reasonable attorneys' fees under § 1415 of the Act consistent with the following: (34 CFR 300.517(c))
1. Determination of amount of attorneys' fees. Fees awarded under § 1415 of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
  2. Prohibition of attorneys' fees and related costs for certain services.
    - a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under § 1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent or parents if:
      - (1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative

- proceeding, at any time more than 10 calendar days before the proceeding begins;
- (2) The offer is not accepted within 10 calendar days; and
- (3) The court or administrative hearing officer finds that the relief finally obtained by the parent or parents is not more favorable to the parent or parents than the offer of settlement.
- b. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation described in this chapter that is conducted prior to the filing of a request for due process under this chapter.
- c. A resolution session convened in accordance with 8VAC20-81-210 will not be considered:
- (1) A meeting convened as a result of an administrative hearing or judicial action; or
- (2) An administrative hearing or judicial action for purposes of this subsection.
3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent or parents who are the prevailing party and who were substantially justified in rejecting the settlement offer.
4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:
- a. The parent or parents, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- d. The attorney representing the parent or parents did not provide to SCS the appropriate information in the notice to request a due process hearing in accordance with this chapter.
5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the state or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of § 1415 of the Act.

**PART V.**  
**ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND**  
**INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH**  
**DISABILITIES IN RESIDENCE OR CUSTODY.**  
**8 VAC 20-81-320.**

**8VAC20-81-320 Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.**

**A. Provision of Education to Children with Disabilities in Residence or Custody**

- 1. Each state board, agency, and institution having children with disabilities in residence or custody must provide education pursuant to standards, policies and procedures established by the Virginia Board of Education which is comparable to that provided to children with disabilities in the public school system.**
  - a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. (§§ 22.1-7 and 22.1-340 of the Code of Virginia)**
  - b. The Superintendent of Public Instruction shall approve the education programs at the Virginia School for the Deaf and the Blind at Staunton (§§ 22.1-7, 22.1-347, and 22.1-348 of the Code of Virginia)**
  - c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education must supervise the education and training provided to school-age residents in state mental retardation facilities. (§ 22.1-7 of the Code of Virginia)**
  - d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. (§§ 22.1-7 and 22.1-209.2 of the Code of Virginia)**
  - e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes. (§§ 22.1-7 and 22.1-209.2 of the Code of Virginia)**
  - f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Medical College of Hampton Roads, the**

Medical College of Virginia Hospitals, and The University of Virginia Hospitals. (§§ 22.1-7 and 22.1-209.2 of the Code of Virginia)

2. The procedures outlined in 8 VAC 20-80-90 are applicable to each state board, agency, and institution having children with disabilities in residence and custody. (§ 22.1-7 of the Code of Virginia)

#### **B. Annual Program Plan**

Each state board, agency, and institution having responsibility for providing such education and training must submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, must include the provisions and assurances as specified in 8 VAC 20-81-230.

1. In addition, the program plan must include the following:
  - a. The educational objectives of the state board, agency, or institution;
  - b. Strategies for achieving the educational objectives, including an organized program for staff development;
  - c. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;
  - d. A system of communication to ensure service continuity in the transition of the child into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia; (§§ 16.1-293 and 22.1-289 E of the Code of Virginia)
  - e. An test plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former children to assist in annual program evaluation;
  - f. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;
  - g. A cooperatively developed procedure for the evaluation of educational personnel;
  - h. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board;
2. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each child to implement the child's IEP.
  - a. If a child has a medical or physical condition that requires modification of the school schedule, a waiver statement must be placed on file.
  - b. This waiver statement must document the physical or mental condition of the individual child which requires significant modification of this schedule, and personnel from the following facilities must file statements of concurrence:
    - (1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;

- (2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions – the Department of Correctional Education;
  - (3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton;
  - (4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;
  - (5) The attending physician -- state medical facilities;
  - (6) The detention superintendent or designee -- juvenile detention homes.
3. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton must provide for each age team of children a planned dormitory and a child-life program, including social and daily living skills, recreation, and cultural activities.

### C. Staff and Facility

1. Each state board, agency or institution must assign personnel to the educational program as follows: (34 CFR 300.156)
  - a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).
  - b. Additional education personnel to provide required related services as delineated in the child's IEP. Related services providers must be qualified consistent with the requirements of subdivision 19 a of 8VAC20-81-20.
  - c. Paraprofessionals who are trained and supervised in accordance with the requirements of the Board of Education.
2. Each state board, agency or institution must staff the educational program as follows:
  - a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;
  - b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:
    - (1) Emotional disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
    - (2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
    - (3) Intellectual Disability - one teacher and one paraprofessional for every 10 children;

- (4) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;
  - (5) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (6) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (7) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (8) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;
  - (9) Autism - one teacher for every six children or one teacher and one paraprofessional for every eight children;
  - (10) Traumatic brain injury - children may be placed in any program, according to the child's IEP;
  - (11) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;
  - (12) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children;
  - (13) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of children exceeds the bed capacity, then the ratio must be one teacher for every 12 children based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests must be supported by sufficient justification.
3. Each facility must have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

**PART VI**  
**COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF**  
**1973, AS**  
**AMENDED.**  
**8 VAC 20-81-330**

**Compliance with § 504 of the Rehabilitation Act of 1973, as Amended**

- A. Each state-operated program providing educational services to persons of school age, the Virginia School for the Deaf and the Blind at Staunton must provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan. (34 CFR 104.33)
- B. SCS is required to adopt grievance procedures (Refer to SCS's 504 Guidelines document) that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. In meeting the due process portion of this requirement, local educational agencies may utilize the due process hearing system specified in 8VAC20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability. If this procedure is selected, the local school system is responsible for 100 percent of the reimbursement costs to the special education hearing officer and any other costs incurred and requested by the special education hearing officer or school division. The Virginia Department of Education trains special education hearing officers on 504 requirements. (34 CFR 104.7 and 34 CFR 104.36)

**504 Services in SCS**

For those children who no longer need special education services or related services in special education and are dismissed from special education but continue to need assistance, the following services are made available:

1. 504 services---Written Plan
2. 504 services---Verbal Agreement between the school and the parent(s)
3. Health-Care Plan

The special education IEP Team may make a referral to the 504 Eligibility Committee if there is sufficient evidence to support that the child has a disability that is affecting a major life skill but no longer in need of special education services. The definition of a qualified child under Section 504 is a person who:

1. Has a physical or mental impairment which substantially limits one or more major life activities;
2. Has a record of such an impairment, and



**3. Is regarded as having such an impairment.**

**A 504 Plan may only need to be for a transition period or until the child can build the self-confidence to work on his or her own. A temporary plan may be written for such things as a broken arm or medical condition requiring modifications and/or accommodations for a short period of time. The special education evaluation data or documentation from a medical may be used for documentation for placement in 504 services. A report received from a medical doctor or specialist would need to be evaluated by the Eligibility Committee to determine if the data received meets the requirements for eligibility as set forth in the guidelines adopted by SCS for 504 services. (Refer to 504 Guidelines). A 504 Plan is as binding as an Individualized Education Plan in special education. Children being evaluated for 504 services for the 1<sup>st</sup> time who do not have a medical needs statement from a doctor or specialist or who do not have any other data to present, must follow the same process as a special education child (Refer to 504 Guidelines).**

## **PARENT INVOLVEMENT**

**SCS has an open-door policy for all parents and/or children. Anyone can discuss any concern with the principals, supervisors, or the superintendent with or without an appointment.**

### **1. Parent Contacts**

#### **A. Parents are invited to all meetings concerning their child**

- (1) Child Study Meetings are held in order to discuss child needs, resources available, intervention strategies, modifications/accommodations, appropriate programming, etc.**
- (2) Days are designated each year at each individual school for parent conferences. Eligibility Meetings to determine placement in or out of special education**
- (3) Meetings to put into place appropriate educational programming and/or related services**

#### **B. Direct and indirect contacts with parents**

- (1) Telephone (private as well as phone conferencing)**
- (2) Home Visits**
- (3) In Person**
- (4) E-mail**
- (5) Progress Reports**
- (6) Written letters**
  - (a) Direct mailing**
  - (b) Certificate of mailing**
  - (c) Certified mailing**

### **4. Parent Participation**

- A. Sought in all meetings**
- B. Encouraged in the selection of testing material designed to evaluate their child's needs**
- C. Sought when determining an appropriate program and/or related services**
- D. Encouraged when discussing various school programs, activities, services or concerns**
- E. Solicited as members of the Special Education Advisory Committee**
- F. Encouraged when child and/or family counseling is necessary for the success of the child either through private contracts or by the school psychologist.**
- G. Necessary for initial placement of a child in special education or when a service is added or dropped.**

## **PROGRAM IMPROVEMENT**

Annual activities are planned to improve the knowledge, skills and abilities of personnel serving children with disabilities. Program Improvement supports the implementation of the State Performance Plan Indicators. These are as follows:

- 1. To improve educational results and functional outcomes for all children with disabilities; and**
- 2. To use quantifiable indicators to adequately measure performance in each of the following three priority areas:**
  - **Provision of a free appropriate public education in the least restrictive environment;**
  - **State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, and a system of transition services; and**
  - **Disproportionate representation of racial and ethnic teams in special education and related services, to the extent the representation is the result of inappropriate identification.**
- 3. To improve graduation rates.**
- 4. To improve English/Reading Proficiency**

This must be achieved through data analysis by determining whether progress or slippage can be measured by the following indicators:

- 1. Free Appropriate Public Education in the Least Restrictive Environment (FAPE and LRE).**
- 2. Early Childhood Education**
- 3. Secondary Education and Transition**
- 4. General Supervision**
- 5. Dispute Resolution**
- 6. Evaluations**

## **SERVICE ANIMALS IN SCHOOL**

### **A. SERVICE ANIMALS**

**An individual with a disability is permitted to be accompanied by his/her service animal on school property when required by law, subject to the conditions of this policy.**

**A “service animal” means a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. (See, however, Section D regarding miniature horses.) The work or tasks performed by a service animal must be directly related to the handler’s disability or necessary to mitigate a disability.**

**School officials can ask the owner or handler of an animal whether the animal is required because of a disability and what work or task the animal has been trained to do unless the answers to these inquiries are readily apparent. School officials may not ask about the nature or extent of a person’s disability and may not require documentary proof of certification or licensing as a service animal.**

### **B. REQUIREMENTS THAT MUST BE SATISFIED BEFORE A SERVICE ANIMAL WILL BE ALLOWED ON SCHOOL PROPERTY**

**Request: A person who wants to be accompanied by his/her service animal must make a prior written request, within 30 administrative days, of the school’s principal if the service animal will come into a school. A person who wants to be accompanied by his/her service animal must make a prior written request of the superintendent for all other locations. These requests must be renewed each school year.**

**Vaccination: The service animal must be immunized against diseases common to that type of animal.**

**Health: The service animal must be in good health. The owner or handler of the animal must submit to the school principal, each school year, documentation from a licensed veterinarian of the following: a current veterinary health certificate; and proof of the service animal’s current vaccinations and immunizations.**

**Control: A service animal must be under the control of its handler at all times. The service animal must have a harness, backpack, vest identifying the dog as a trained service dog, leash (blaze orange in color for hearing dogs), or other tether unless either the handler is unable because of a disability to use a harness, backpack, vest, leash, or other tether, or the use of a harness, backpack, vest, leash, or other tether would interfere with the service animal’s safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler’s control.**

**Denial of Services:** If the above requirements are not met, the principal or superintendent will notify in writing (Prior Written Notice), within 30 administrative days, the person making the request the reasons the request was denied.

**C. SERVICE DOGS IN TRAINING**

Experienced trainers of service animals may be accompanied on school property by a dog that is in training to become a service animal. The dog must be at least six months of age. Trainers must wear a jacket identifying the organization to which they belong. Persons conducting continuing training of a service animal may be accompanied by a service animal while on school property for the purpose of school business. Persons who are part of a three-unit service dog team may be accompanied by a service dog while on school property provided that person is conducting continuing training of a service dog. A three-unit service dog team consists of a trained service dog, a disabled person, and a person who is an adult and who has been trained to handle the service dog. The dogs may accompany these persons while on school property for school purposes.

**Use of Harnesses, Vests, etc.:**

A dog that is in training to become a guide dog or a currently trained guide dog that is undergoing continuing training must be in a harness.

A dog that is in training to become a hearing dog or a currently trained hearing dog that is undergoing continuing training must be on a blaze orange leash.

A dog that is in training to become a service dog or a currently trained service dog that is undergoing continuing training must be in a harness, backpack, or a vest identifying the dog as a trained service dog.

The training cannot disrupt or interfere with a school's educational process. It is expected that training would not normally take place in the classroom during instructional time.

All requirements of this policy which apply to service animals, such as health certificates, annual written requests, and supervision, care and damages, also apply to dogs in training.

**D. MINIATURE HORSES**

A miniature horse may be used by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, SCPS considers the following factors:

1. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
2. Whether the handler has sufficient control of the miniature horse;
3. Whether the miniature horse is housebroken; and
4. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

All additional requirements outlined in this policy, which apply to service animals, shall apply to miniature horses.

**E. EXTRA CHARGES**

The owner or handler of a service animal cannot be required to pay an admission fee or a charge for the animal to attend events for which a fee is charged.

**F. SUPERVISION AND CARE OF SERVICE ANIMALS**

The owner or handler of a service animal is responsible for the supervision and care of the animal, including any feeding, exercising, and clean up.

**G. DAMAGES TO SCHOOL PROPERTY AND INJURIES**

The owner or handler of a service animal is solely responsible for any damage to school property or injury to personnel, students, or others caused by the animal.

**H. REMOVAL OF SERVICE ANIMALS FROM SCHOOL PROPERTY**

A school administrator can require an individual with a disability to remove a service animal from school property under the following circumstances:

1. The animal is out of control and the animal's handler does not take effective action to control it;
2. The animal is not housebroken;
3. The presence of the animal poses a direct threat to the health or safety of others; or
4. The presence of an animal would require a fundamental alteration to the service, program, or activity of the school division.

If the service animal is removed, the individual with a disability shall be provided with the opportunity to participate in the service, program, or activity without the service animal.

**I. DENIAL OF ACCESS AND GRIEVANCE**

If a school official denies a request for access of a service animal or a dog in training, the disabled individual or parent or guardian can file a written grievance with the school division's Section 504 Coordinator.

## **AMENDMENT #1**

### **Fort Blackmore Center of Excellence Center-Based Program Description**

Fort Blackmore Center consists of one Early Childhood Special Education class, two Early Childhood Special Education ABA classes, three Elementary ABA classes, one Secondary ABA class, and three Life Skills classes.

Fort Blackmore Center offers specialized instructional services for students ages 2-22 with the disability designations of developmental delays (DD), multiple disabilities (MD), autism (AUT), intellectual disabilities (ID) or other health impairment (OHI). Placement is through a referral process. This school is considered a public day school as part of the continuum of special education services for students who are not able to demonstrate progress with appropriate accommodations and strategies in less restrictive educational settings (i.e., special education services in a special education setting in a general education school setting). Most students who attend Fort Blackmore Center receive special education services primarily due to emotional and/or behavioral needs. The majority of the students also have special education needs specific to academic difficulties as well as deficits in social skills and executive functioning skills. Occasionally, students may be placed at Fort Blackmore Center due to the severity of behaviors through a Behavior Intervention Plan.

The Early Childhood Special Education (ECSE) class includes special instruction and related services provided to all children ages 2 through 5, who qualify under the Individuals with Disabilities Act. Services are based on an individualized education program (IEP) which is developed with the parents of each child who is eligible for special education services. The curriculum is language rich and emphasizes communication, early literacy, and social development along with development in other areas.

The ECSE ABA classes are designed to address the specific needs of preschool-age children who have been identified as having Autism Spectrum Disorder or present characteristics on the autism spectrum, and who cannot benefit from the early childhood class-based program. The program uses Applied Behavior Analysis (ABA) and Verbal Behavior (VB) to foster communication, social skills, appropriate behavior and other skill development. Classes are designed with a reduced adult to student ratio and systematic instruction is provided in a highly structured setting to maximize learning.

Some students who attend the life skills classes at Fort Blackmore Center are severely cognitively delayed and/or exhibit delays in all areas of development. Some students in the life skills programs have medical conditions, as well. All students may require significant instructional adaptations, and many require hand-over-hand assistance to perform simple tasks and need some level of support to complete daily living activities.

Applied Behavior Analysis is also implemented in our elementary and secondary ABA classrooms. Applied behavior analysis (ABA) is the application of behavioral principles to shape behaviors and teach new skills. Behaviors are observed and analyzed to determine their function. The antecedents and consequences (events preceding and subsequent to the behavior) are analyzed and manipulated in an effort to shape or

change behavior. Skills are broken down into small, discrete steps and taught systematically. In designated classrooms, ABA is used to modify behaviors, teach new skills, and prepare students to function as independently as possible. Our Board-Certified Behavior Analyst provides ongoing training for parents at parent request and direct support to school staff to enhance the delivery of services using ABA methodologies. This includes the development and implementation of individualized instructional curricula and behavioral programs.

Typical Program Features:

- Stand-alone building
- Principal
- Nurse
- Itinerant guidance counselor
- Specifically-trained instructional and support staff
- Low student to staff ratio
- Early academic curriculum, life skills curriculum, and SOL/ASOL curriculum
- Data collection
- Board Certified Behavior Analyst
- Speech Therapy
- Physical Therapy
- Occupational Therapy
- Adaptive PE
- School Resource Officer



# **Applied Behavior Analysis Classroom** **Handbook and Guidelines**

Fort Blackmore Center of Excellence  
214 Big Stoney Creek Road  
Fort Blackmore, VA 24250  
Phone: (276) 995-2471  
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## Classrooms

The Applied Behavior Analysis (ABA) based classrooms will attempt to enroll no more than 10 students per classroom and each classroom will have three adults.

One-on-one assistants will not be assigned to individual students. All staff in the classroom will be trained to work with each student equally. The more individuals a student can work with, the more likely the skills that are taught will generalize to other individuals or environments that were not used in original teaching trials (i.e., parents and home).

ABA based instruction will be provided within regular school hours (8:30 am – 3:00 pm). Students are served from all areas of the county; therefore, instruction time may vary based on bus routes. Parents are encouraged to implement procedures developed for their students at home. Parent training on ABA techniques may be provided by the behavior analyst upon request. Parents are encouraged to request training on implementing ABA techniques for their child.

Scott County Public Schools has nine ABA classrooms available including two Early Childhood Special Education classrooms, a kindergarten-second grade elementary classroom, a kindergarten-second grade life skills classroom, a third-fourth grade elementary classroom, a third-fifth life skills classroom, a fifth-seventh grade secondary classroom, a sixth-twelfth grade life skills classroom, and an eighth-twelfth grade secondary classroom. Students can stay enrolled in Scott County Public Schools with an IEP until the age of 22.

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## Assessments

Assessments will be conducted to provide a baseline measure of the student's current performance. The following assessments will be utilized depending on the student's area of need and ability:

- The Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP)
  - The VB-MAPP is a developmental assessment that measures 170 learning and language milestones that are sequenced and balanced across three development levels (e.g. 0-18 months, 18-30 months, and 30-48 months). The skills that are outlined in each level correspond with the learning and language skills demonstrated by typically developing children within those age ranges.
- Essential for Living
  - Essential for Living is a curriculum-based assessment for communication, behavior, and functional skills for children and adults with moderate-to-

severe disabilities. Essential for Living is an assessment and curriculum that is composed of functional skills and behaviors which are essential for effective daily living. Although no score is provided with Essential for Living, the assessment is curriculum-based and provides a current and on-going measure of a student's performance. Essential for Living outlines the following eight skills (called the Essential Eight) as crucial skills for an individual to have:

1. Making requests
2. Waiting
3. Accepting removals, making transitions, sharing, taking turns
4. Completing 10 consecutive, brief, previously acquired tasks
5. Accepting 'No'
6. Following directions related to health and safety
7. Completing daily living skills related to health and safety
8. Tolerating situations related to health and safety.

- The Woodcock-Johnson III (WJ III) Tests of Achievement
    - The Woodcock-Johnson III Tests of Achievement is an educational assessment that measures a student's ability in each area listed below. The score provides an age equivalent and grade equivalent for each area.
      - Letter-word identification
      - Applied Problems
      - Spelling
      - Passage Comprehension
      - Calculation
      - Writing Samples
      - Reading Fluency
      - Math Fluency
      - Writing Fluency
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## Curriculum

Individual programs will be developed for each student based on their level of development and academic functioning. Individual programs will be developed and monitored by the Board-Certified Behavior Analyst (BCBA). The following assessments and/or curriculums will be used to develop individualized programs for each student. One or more of the curriculums listed below will be used depending on the needs of the individual student.

- The Verbal Behavior-Milestones Assessment and Placement Program (VB-MAPP) provides a comprehensive list of what skills a student should have depending on their developmental level is provided in the VB-MAPP. The VB-MAPP will be used to determine what areas need intensive intervention and what areas should be targeted for teaching. If a student receives a score that falls in the

Level 1 range, their individual programming will be consistent with areas of deficit in Level 1 skills rather than skills at a higher level (Level 3). The level of difficulty and intensity will increase based on the student's performance.

- Essential for Living provides a list of skills in each of the seven skill domains. Skills are designated as must-have, should-have, good-to-have, and nice-to-have within each domain. Skills that are listed as must-have are more functional, less difficult, and should be taught first. Skills that are designated as should-have, good-to-have and nice-to-have skills are progressively less functional and more difficult skills that will be taught following mastery of must-have skills. The level of skill that is taught to each student will depend on their current level of performance on the assessment and what is determined to be most appropriate for the functional development of the student.
  - The Life Skills Program Planner includes seven areas of focus including: functional academic skills, communication skills, interpersonal skills, independent living skills, leisure skills, pre-vocational skills, and vocational skills. A list of relevant skills for each of the seven components is provided as well as task analyses of each skill.
  - The Virginia Standards of Learning or Essential Standards of Learning will be used for students that are assessed using the Woodcock-Johnson III Tests of Achievement. The standards of learning that correspond with a student's grade-equivalent score on the WJ III will be used to develop educational programs for the student. Standards that are also considered to be more functional skills will be taught first.
  - The Individualized Goal Selection Curriculum contains 18 Areas of development including Maladaptive Behavior, Speech, Expressive/Receptive Language, Social Skills, Reading, Life Skills, Emotional and Self-Control Development, as well as other areas. There are approximately 2,000 individual tasks presented. The curriculum provides a guide for the selection of appropriate goals based on individual needs and areas of concern. The sequences of development presented serve as a framework to determine appropriate sequencing for each student.
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## Referral Process

Research has shown that Applied Behavior Analysis is an effective teaching method for children with autism spectrum disorders (ASD). Children with ASD or autistic characteristics will automatically be screened for the class and will receive priority for entry to the classroom. Children with other diagnoses and/or children who exhibit significant behavior problems that are interfering with their learning (and the learning of others) and that have a behavior intervention plan that is unsuccessful in the student's current education setting may also be considered for admittance to the

classroom. Recommendations from outside therapists and doctors will be considered but will not necessarily guarantee admittance to the class. The referral process is described below:

1. The responsible school will submit a referral to Fort Blackmore Center for the student in need.
2. Data will be presented to staff at Fort Blackmore Center, including all accommodations and modifications that were put into place at the student's responsible school.
3. The principal or BCBA will observe the student in his/her school environment.
4. Parent requests to view the services and program at the center will follow the SCPS board policy on classroom visitors. Permission form for such visits will also be required.
5. A meeting will be held with the parent(s), principal and/or designee from both schools, BCBA, teacher from receiving school, special education teacher, and any appropriate specialists. The most appropriate placement will be determined. A continuum of alternative options will always be considered and discussed.

The following will be discussed prior to a student being placed at Fort Blackmore Center:

1. Graduation and Diploma Status:
  - a. The following types of diplomas are available with the requirements listed for each one. The diploma status for students who attend Fort Blackmore Center may be affected depending on their placement and curriculum.
    - i. Advanced Studies Diploma: a student must earn at least 26 standard credits and 5 verified credits. Standard credits are earned by successfully completing required and elective courses; verified credits are earned by successfully completing require courses and completing end-of-course SOL tests or other assessments approved by the state Board of Education.
    - ii. Standard Diploma: a student must earn at least 22 standard credits and 5 verified credits. Standard credits are earned by successfully completing required and elective courses; verified credits are earned by successfully completing require courses and completing end-of-course SOL tests or other assessments approved by the state Board of Education.

- iii. Applied Studies Diploma: a student identified as having a disability who completes the requirements of their individualized education programs (IEPs) and meet certain requirements prescribed by the Board of Education pursuant to regulations, but do not meet the requirements for any named diploma.
  - iv. Certificate of Program Completion: a student who completes a prescribed program of study defined by a local school board but who do not qualify for diplomas.
- 2. The most appropriate curriculum based on student need/performance will be discussed with the parent and determined by the IEP team.
  - 3. All students attending Fort Blackmore Center will not have access to typically developing peers daily but will have numerous opportunities to be with typically developing peers who travel to the classroom from other schools in the county to engage in activities throughout the week for socialization.
  - 4. CTE courses and electives will be offered to 10<sup>th</sup>-12<sup>th</sup> grade students.

If you have questions about the referral process, please contact the following:

- Brenda Robinette: 276-386-6118 or [brenda.robinette@scottsschools.com](mailto:brenda.robinette@scottsschools.com)
- Stacy Wood: 276-995-2471 or [stacy.wood@scottsschools.com](mailto:stacy.wood@scottsschools.com)
- Courtney Currier: 276-995-2471 or [courtney.currier@scottsschools.com](mailto:courtney.currier@scottsschools.com).

## Entry Guidelines for Placement in an Applied Behavior Analysis Classroom

The following entry guidelines will be utilized when placement in one of the Applied Behavior Analysis classrooms is being considered for students aged three to 22 with autism spectrum disorders and/or students with significant behavior problems that are interfering with their learning (or the learning of others) in another setting.

- A. Students who exhibit some or all of the following skills will be considered for entry:
  - a. Student demonstrates emerging skills necessary for learning in individual and group settings such as imitating actions, completing matching to sample tasks, and following 1-step instructions. The student should demonstrate the ability to complete one of the three skills listed below.
    - i. Student can independently imitate at least one gross motor or fine motor action or imitate a spoken word or sound within ten teaching trials.

- ii. Student can independently match one object or picture to a sample within ten teaching trials.
  - iii. Student can independently follow at least one instruction related to daily routines and/or follow at least one receptive instruction to do an action or touch an item within ten teaching trials.
- b. Student demonstrates responsiveness to reinforcement by acquiring or approximating a novel skill within ten teaching trials.
- c. On the most recent multidisciplinary evaluation there is documentation of regression or arrests in one or more developmental areas with consequent communication deficits, social isolation, or indifference and behavioral noncompliance, none of which are due to sensory impairment or global cognitive limitation.
- d. Student demonstrates emerging communicative intent.
  - i. Student is observed to make speech sounds in the natural environment.
  - ii. Student demonstrates basic wants and needs (visually references, points to, stands next to, or takes an individual to reinforcers).
- e. Students with more than one year of educational experience show documented difficulties making progress on 80% of IEP goals with limited responsiveness to other strategies.
- f. Students that would benefit from repetition, prompting, reinforcement, and intensive 1:1 instruction to attain skill acquisition in areas of deficit or to reduce excessive self-stimulatory or escape or avoidance-maintained behaviors.
- g. Recommendation by the Board-Certified Behavior Analyst or Principal after an observation has been completed.

### Exit Guidelines for Placement Outside of an Applied Behavior Analysis Classroom

When utilizing the exit guidelines, a student may fall into section A that references the student's skill acquisition or section B that references the student's lack of skill acquisition. The IEP team will consider either section A or section B when determining the continuation or recommendation to no longer utilize Applied Behavior

Analysis Principles. Some of the guidelines below may not be applicable based on the student's placement.

- A. Students should exhibit at least 80% of the following:
- a. Generalization
    - i. Student consistently demonstrates both stimulus and response generalization on the first or second trial.
  - b. Range of Items and Events that Function as Reinforcers
    - i. Student engages with reinforcers that are intermittent, social, age appropriate, varied, and involve verbal information and change frequently.
  - c. Rate of Acquisition of New Skills
    - i. Student consistently acquires new target skills daily averaging 5 trials or less.
  - d. Retention of New Skills
    - i. Student typically retains acquired skills for at least 1 week without maintenance trials.
  - e. Learning from the Natural Environment
    - i. Student easily and consistently learns new skills daily in the natural or group setting without intensive teaching.
  - f. Language
    - i. Student will be able to request novel objects, actions, and/or information using short phrases and sentences in less than 5 teaching trials.
    - ii. Student independently tacts at least 25 items or actions per day without being asked to label those items or actions.
    - iii. Student demonstrates tact to intraverbal transfer for 10 topics or events without training.
    - iv. Student demonstrates transfer daily, involving advanced parts of speech and all speaker and listener skills.
  - g. Adaptability to Change
    - i. Student handles change in routine well and ignores or copes with other distractions and changes.
  - h. Social Behavior.,



- i. Student will initiate and maintain peer interactions for at least two exchanges.
  - ii. Student engages in interactive toy play with peers for up to 10 minutes with at least four social contacts with peers during that period.
- i. Group instruction
  - i. Student learns new academic skills in a group teaching format and does not require direct instruction.
  - ii. Student works independently on academic tasks for at least 10 minutes without adult prompting to stay on task.
- j. Self-Help Skills
  - i. Student is motivated, initiates approximations for most skills, and generalizes, but may need verbal prompts.
  - ii. Student initiates or mands to use the bathroom and independently completes all steps of the toileting routine.
  - iii. The student independently gets food items, eats, and uses utensils, cleans up independently, or with one verbal prompt.
- k. Behavior
  - i. The student no longer demonstrates high or sustained rates of problem behavior such as aggression, self-injury, and/or property destruction that interfere with their learning or the learning of others as determined by the IEP team.
  - ii. The student is aware of their behavior needs and initiates coping mechanisms with minimum reminders.
  - iii. The student demonstrates reduced rates of self-stimulatory or disruptive behaviors.

## Glossary of Terms

The following words have been used throughout this document. Definitions have been provided for clarification.

- Applied Behavior Analysis: refers to the systematic application of behavior principles to change behavior. ABA procedures can be used to increase desired behaviors, decrease inappropriate behaviors, and to teach new behaviors to students of all functioning levels.
- Exchange: the reciprocal interaction between two or more individuals.
- Generalization: occurrence of a target behavior in circumstances other than the initial training environment (demonstrates skills across people, places, objects).
- Independent: The student responds to instruction(s) without additional prompts or cues.
- Intraverbal: the speaker responds to another speaker conversationally.
- Mand: the speaker communicates what they want or need.
- Reinforcement: application of a consequence following a behavior that increases the likelihood of a behavior reoccurring in the future.
- Spontaneously: is the demonstration of a response without instruction or prompting to perform the behavior.
- Tact: the speaker labels something in their environment
- Teaching trial (discrete trial): teaching session that consists of four parts
  1. The trainer's presentation ( $S^D$ )
    - a. Appropriate prompt is provided (if needed)
  2. The student's response
  3. The consequence
  4. A short pause between the consequence and the next instruction.

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