

A PARENT'S GUIDE TO SPECIAL EDUCATION



Revised 2001

Virginia Department of Education
Division of Instructional Support Services
Office of Special Education and Student Services
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INTRODUCTION

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

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

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

You may find these regulations, the procedural safeguards notice, and this guide on the VDOE Web site (<http://www.pen.k12.va.us>). Copies are available at no cost from the VDOE at the address below. Braille copies, audio tapes, and large print versions are also available upon request.

The VDOE has an office for parent resources. This office provides assistance and information to Parent Resource Centers located in many school divisions in Virginia. Call or write the VDOE for information about these centers and other available resources.

Parent Resources
Special Education and Student Services
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218-2120
1-800-422-2083 (voice)
1-800-422-1098 (TDD)

You may also find information on special education and other education issues by referring to the VDOE Web site at <http://www.pen.k12.va.us> or the United States Department of Education Web site at <http://www.ed.gov>. The toll free telephone number for the U.S. Department of Education is 1-800-USA-LEARN (1-800-872-5327).

Key to Abbreviations

AT

Assistive technology

BIP

Behavioral intervention plan

CSA

Comprehensive Services Act

ESY

Extended school year

FAPE

Free appropriate public education

FBA

Functional behavioral assessment

IAES

Interim alternative educational setting

IDEA

Individuals with Disabilities
Education Act

IEE

Independent educational evaluation

IEP

Individualized education program

LRE

Least restrictive environment

PE

Physical education

SOL

Standards of Learning

VAAP

Virginia Alternate Assessment Program

VDOE

Virginia Department of Education

UNDERSTANDING SPECIAL EDUCATION LAW

Brief History of State and Federal Law

Virginia has a history of funding and providing special education programs for children with disabilities. In 1968 the first legislation in Virginia to require special education for certain children with disabilities was passed. In 1972 the General Assembly expanded this legislation to include all children with disabilities, ages 2 to 21, inclusive. During this time, Congress was studying the need for a national policy for the education of children with disabilities. In response to the study, the Education for All Handicapped Children Act of 1975 (Public Law 94-142) was signed into federal law. An amendment in 1990 changed the name of this law to the Individuals with Disabilities Education Act (IDEA). The most recent amendment in 1997 restructured IDEA, and final regulations to guide states in implementing these changes were issued in March of 1999.

The current legal provisions regarding special education in Virginia, modeled after IDEA, are contained in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (effective January 1, 2001), *8 VAC 20-80-10 et seq.*, and the *Code of Virginia*.

Free Appropriate Public Education

What are the purposes of special education laws?

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

What is FAPE?

FAPE means special education and related services that:

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

Age 2 to 21, Inclusive

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

Law

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

Where are these services provided?

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

Who qualifies as a parent?

Special education law defines parent as:

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

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

What other law helps children with disabilities?

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



School

School means a local public school division, a state-operated program (funded and administered by Virginia), or one of the Virginia schools for the deaf, the blind, and the multi-disabled.

Surrogate Parent

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

- * has no conflicts with the interests of the child;*
- * has knowledge and skills that ensure adequate representation of the child;*
- * is not an employee of the Department of Education or any other agency which is involved in the education or care of the child;*
- * is an adult; and*
- * resides in the same general geographic area as the child, if possible.*

UNDERSTANDING THE SPECIAL EDUCATION PROCESS

Overview

What is special education?

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

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

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

What is the special education process?

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

- 1. Identification and referral.** When your child is suspected of having a disability, a referral, which is a written or oral request for an evaluation, is given to the school.
- 2. Evaluation.** The school then evaluates the child to determine whether your child has a disability as well as the nature and extent of the special education and related services that your child needs.
- 3. Determination of eligibility.** Based on the results of the evaluation, a team decides if your child is eligible to receive special education and related services. To be found eligible, the team must decide that the child has a disability and as a result needs special education and related services.
- 4. Development of an individualized education program (IEP) and determination of services.** If your child is eligible to receive special education and related services, a team then develops and implements an appropriate IEP to meet the needs of your child. This team also decides the particular services the child will receive. The IEP must be reviewed and revised at least annually.



- 5. Reevaluation.** At least every three years, a team must reevaluate your child to determine whether your child continues to need special education and related services.

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

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

Identification of Children with Disabilities

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

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

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



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

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

Home schooling refers to either home instruction or home tutoring.

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

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

Child Find

How does the school conduct screening?

Screening is part of the identification process. You will receive a general notice about the screening and will be notified if your child fails the screening. Within 60 business days of their initial enrollment in a public school in Virginia (usually in kindergarten), all children through grade three must be screened in the areas of speech, voice, language, and fine and gross motor functions. All children within 60 business days of initial enrollment in a public school in Virginia, as well as all children in grades three, seven, and ten, must be screened in the areas of vision and hearing.

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

In some cases when a child fails a screening, the school may not suspect a disability. A referral to an instructional support team, such as a child study committee, may be made.

TIMELINE

Schools must screen all children within 60 business days of initial enrollment in public school in certain areas to determine if a referral for an evaluation for special education and related services is indicated.

What happens if the screening suggests a disability?

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

- your child will be referred to the special education administrator or designee no more than five business days after the screening;
- you will be notified; and
- the school will maintain screening information in a confidential manner.

TIMELINE

Any child suspected of having a disability as a result of a screening must be referred to the special education administrator no more than 5 business days after the screening.

Business, Calendar, and School Days

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

Business days means Monday through Friday, 12 months of the year, not counting federal and state holidays, with the exception of the notice requirement for placing your child in private school. State and federal holidays are posted on the VDOE Web site at <http://www.pen.k12.va.us>.

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

Timelines for suspensions are counted in school days.

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

Special Education Administrator/Designee in this guide means the special education administrator or the administrator's designee (a person chosen by the administrator to act in the administrator's place).

Child Study Committee

What happens if the child study committee suspects a disability?

If the child study committee suspects a disability, it must refer your child to the special education administrator within five business days.

TIMELINE

The child study committee must meet within 10 business days following the committee's receipt of the referral. A referral from the committee must be made to the special education administrator within 5 business days following the committee's determination that your child is suspected of having a disability.

Individual Referral

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

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

What happens after a request for an evaluation?

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

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

The special education administrator must decide whether to evaluate your child or request a review by the child study committee. After review, the committee will make the decision about the evaluation referral. However, this committee must not be used to:

- deny or delay your right to a due process hearing;
- deny or delay your right to make a future referral; or
- delay an evaluation of your child.

Child Study Committee

Each school establishes a child study committee to review information on any referred child. School personnel, you, or another person may refer a child to this committee. The child study committee has a general education function and may have another name, such as "teacher assistance team" or "instructional support team." As a member of the committee, the building principal or designee (a person chosen by the principal to act in the principal's place) receives all referrals to the committee.

The committee includes the following people:

- * the person who referred your child (except where it would breach the confidentiality of your child);
- * the principal or designee;
- * at least one teacher; and
- * at least one specialist.

The purpose of the committee is to identify and recommend strategies to address your child's learning, behavior, communication, or development. In addition, the committee must explain these strategies in writing. The committee may make a referral for evaluation for special education and related services at any time. This may be prior to or while implementing these strategies. Any action by the committee must be in writing and must include the information on which the decision is based.

TIMELINE

The child study committee must meet within 10 business days following the committee's receipt of the referral.

Therefore, this request for review by the child study committee must occur within five business days after the special education administrator receives the referral. Within ten business days of its receipt of the referral, the committee must decide whether to evaluate. The referral to the child study committee, however, does not increase the number of days for conducting an evaluation; rather, the committee's work is part of the time period set by law of 65 business days from the date of the referral to the eligibility decision.

T I M E L I N E

The special education administrator may request a review by the child study committee; this request must be made within 5 business days of the special education administrator's receipt of the referral. Within 10 business days of its receipt of the referral from the special education administrator, the committee must decide whether to evaluate.

After the special education administrator receives the referral for evaluation, eligibility for special education and related services must be determined within 65 days.

Evaluation

What happens if the school decides to evaluate?

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

- ▶ give you all notices of the evaluation process, give you a copy of the procedural safeguards, inform you of the procedures for evaluation, involve you in deciding what evaluation information is needed, and request any evaluation information that you may have;
- ▶ include you as a member of the team reviewing evaluation data and deciding whether more information is needed;
- ▶ get your written consent to conduct an evaluation; and
- ▶ ensure that all evaluations are completed and that a decision about eligibility for special education is made within 65 business days after the referral for evaluation is received by the special education administrator.

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



What happens if the school decides not to evaluate?

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

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

Individual Evaluation

What is an individual evaluation?

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

- prior written notice in your native language or mode of communication, unless it is not feasible;
- notice of procedural safeguards;
- written parental consent;
- an opportunity for a due process hearing;
- confidentiality;
- an opportunity for examination of records; and
- nondiscriminatory testing.

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

Who decides what information is needed for the evaluation?

The decisions are made by a group that includes:

- you;
- at least one of your child's regular education teachers if your child is in regular education classes or a regular education teacher if your child may participate in regular education in the future;
- at least one special education teacher or related services provider (this person must be serving your child if your child is participating in special education);
- a person from the school who is qualified to provide or supervise the provision of special education and who knows about the general curriculum and available resources (this person may be another member of the team);
- a person who can interpret what the tests mean for your child's education (this person also may be another member of the team, other than you or your child);



Native Language/Mode of Communication

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

- other people who are invited at your or the school's discretion and who have knowledge or special expertise about your child (the person inviting another individual makes the decision that the invited individual has knowledge or special expertise about your child);
- your child, if appropriate; and
- other qualified professionals, as appropriate.

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

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

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

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

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

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

How can I be involved?

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



What requirements are followed in evaluating my child?

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

- Tests and other evaluation materials must be provided and administered in your child's native language or other mode of communication, unless it is not feasible.
- If your child has limited English proficiency (or uses a language other than English), materials and procedures used in the testing must be selected and administered to ensure that they measure the extent to which your child has a disability and needs special education, rather than measuring his or her English language skills.
- A variety of tests or strategies must be used to gather information about your child.
- Any standardized tests must be validated for the specific purpose for which they are used. They also must be administered by trained personnel according to the instructions provided by the producer of the tests.
- If a test is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.
- Any nonstandardized test administered by qualified personnel may be used by the group.
- Tests must measure specific areas of educational need and not merely those that provide your child's intelligence score;
- Tests must take into consideration any impaired sensory (for example, vision or hearing), motor, or communication skills so that these impairments do not negatively affect the test results.
- The evaluation must be broad enough to identify all of your child's special education needs and related services even if those needs are not commonly linked to the suspected disability.
- If the team suspects a specific learning disability, the evaluation must include an observation by at least one group member other than your child's regular teacher in the regular education classroom.



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

In addition, a written copy of the evaluation report must be made available to you at least two business days before the eligibility meeting. The special education administrator should let you know where and when you can get a copy of the report.

T I M E L I N E

A written copy of the evaluation report must be made available to you at least 2 business days before the eligibility meeting.

What tests will my child have?

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

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



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

Reevaluation

When will my child be reevaluated?

At least every three years, the school must reevaluate your child to determine whether he or she continues to be a child with a disability and to determine his or her educational needs. This reevaluation is often called a “triennial.” However, your child may be reevaluated more often if you or the teacher requests it or if conditions justify a reevaluation.

What happens in a reevaluation?

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

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

If the group decides that no additional assessments are needed, the school must inform you. If you think an additional assessment is needed to determine eligibility, the school must conduct the assessment.

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

Independent Educational Evaluation (IEE)

What happens if I disagree with the evaluation?

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

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

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

In addition, you may have the results of the IEE considered in any decision about your child's special education or presented as evidence at a due process hearing.



Eligibility

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

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

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

If your child is suspected of having a specific learning disability, the group must include:

- your child's regular education teacher; and
- a person qualified to conduct diagnostic examinations of children, such as a school psychologist, speech-language pathologist, teacher of specific learning disabilities, or teacher of remedial reading.

At least one school representative must have either assessed or observed your child.

Who is a child with a disability?

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

- autism;
- deafness;
- deaf-blindness;
- developmental delay;
- emotional disturbance;
- hearing impairment, including deafness;
- mental retardation;
- multiple disabilities;
- orthopedic impairment;
- other health impairment;
- severe disability;
- specific learning disability;
- speech or language impairment;
- traumatic brain injury; or
- visual impairment, including blindness.



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

For your child to be found eligible, a disability must affect his or her educational performance. In other words, the disability must cause your child to need special education and related services.

What are related services?

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

- counseling services, including rehabilitation and psychological counseling;
- early identification and assessment;
- interpreting and transliterating;
- medical services required for diagnostic and evaluation purposes;
- orientation and mobility services;
- other programs determined to be necessary for a child with a disability to benefit from special education;
- parent counseling and training;
- physical and occupational therapy;
- psychological services;
- recreation, including therapeutic recreation;
- school health services;
- social work services;
- speech-language pathology and audiology services; and
- transportation.

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

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

How does my child become eligible to receive related services?

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

What happens during the eligibility meeting?

In determining eligibility, the group will look at the evaluation results and information from a variety of sources and will work toward consensus (agreement) within the group. A member of the group who cannot agree must give reasons in a separate statement.

The school will get your consent for the eligibility determination. It also will give you copies of the evaluation report and documentation on the eligibility decision. If your child is suspected of having a specific learning disability, the documentation must include information about:

- the specific learning disability;
- the reasons for the decision;
- any behavior that affects your child's learning;
- any medical issues that affect your child's learning;
- whether there is a wide gap between achievement and ability that cannot be closed without special education and related services; and
- any finding of any effects of environmental, cultural, or economic disadvantage.

Your child also may not be found eligible if he or she does not meet the criteria and the determining reason is that your child either:

- had a lack of instruction in math or reading; or
- uses a language other than English.

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

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



Criteria for a Specific Learning Disability

The group may determine that your child has a specific learning disability if:

- * your child does not achieve, in keeping with his or her age and ability, in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculations, or mathematical reasoning; and*
- * a severe difference between achievement and intellectual ability exists in one or more of those areas.*

However, the group may not identify your child as having a specific learning disability if this difference between achievement and ability is primarily the result of:

- * a visual, hearing, or motor impairment;*
- * mental retardation;*
- * emotional disturbance; or*
- * environmental, cultural, or economic disadvantage.*

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

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

T I M E L I N E

Eligibility for special education and related services must be determined within 65 business days after the special education administrator receives the referral for evaluation.

Previous Enrollment in Special Education

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

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

If your child has been receiving special education from a public school in Virginia and transfers to another in-state public school, the new public school must:

- adopt and use the existing IEP of the previous school with your consent; or
- develop a new IEP for your child with your consent.

The new school may provide interim services with your consent. However, if you disagree with interim services provided, the new school must implement the existing IEP until a new IEP is developed and implemented.

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

If your child transfers to a public school in Virginia from another state, the Virginia school must:

- decide whether to adopt the eligibility decision, the most recent evaluation, and IEP from the previous out-of-state school or to develop a new IEP with your consent; and



- give you notice of its decision and the process it will follow.

If, however, you are not satisfied with the IEP from the previous out-of-state school or if a revision is needed for other reasons, the Virginia school must develop an IEP within 30 calendar days of the school's decision to accept the eligibility decision from the previous out-of-state school.

If the Virginia school does not adopt the previous out-of-state school's evaluation of the transferring child because it does not conform to federal or Virginia special education law or the school does not receive a copy of the evaluation, the school must:

- give you notice of its decision and the evaluation process;
- begin evaluation procedures; and
- conduct an evaluation.

Once the evaluation is complete and eligibility is decided, an IEP meeting must be held no later than 30 calendar days after the date eligibility was decided. The most recent IEP, excluding sections of the IEP that are inconsistent with the law, must be used until the new IEP is developed and accepted.

TIMELINE

An IEP meeting must be held no later than 30 calendar days after the school either decides to accept the previous out-of-state school's evaluation and eligibility decision or determines your child's eligibility.



Termination of Special Education and Related Services

When do special education and related services end?

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

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

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

Diplomas and Eligibility

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

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

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

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

The school will give you notice of this decision.

A related service may be discontinued during an IEP meeting as long as:

- a representative of the related services area is included in the decision by telephone, by other similar electronic means, or in person; and
- you give your consent.

The school will give you notice of this decision.

What happens if I change my mind?

If you change your mind, or withdraw your consent, for your child to continue to receive special education and related services, the school must follow eligibility procedures to terminate eligibility. If the school believes your withdrawal of consent would deny your child's right to FAPE, it may use mediation or due process proceedings to protect your child's rights.

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

Individualized Education Program (IEP)

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

When your child is first found eligible, a meeting must be held within 30 calendar days to develop an individualized education program (IEP).

T I M E L I N E

An IEP meeting must be held within 30 calendar days to develop an IEP.



What is an IEP?

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

- at the beginning of each school year;
- before special education and related services are provided for your child; and
- as soon as possible following an IEP meeting.

Who develops my child's IEP?

The IEP team for each child with a disability includes:

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

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

There may be other participants:

- If the meeting concerns transition services for your child, then the school must invite him or her and someone from any agency that is likely to be responsible for providing or paying for the transition services.
- If any accommodations or modifications are written into the IEP for your child to participate in transportation, someone from transportation may be invited or consulted before the IEP is written.

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

Regular Education Teacher

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

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

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

How often will my child's IEP be reviewed?

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

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

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

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

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

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

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

What happens in an IEP meeting?

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

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

- strengths of your child and your concerns for enhancing your child's education;
- results of the first or most recent evaluation of your child;
- your child's scores on any general state or division-wide tests;
- behavior intervention strategies and supports if your child's behavior interferes with learning;
- your child's language needs if he or she uses a language other than English;

Notice for Transition Planning

When your child is fourteen (or younger, if appropriate), the IEP notice must state that:

- * the purpose of the meeting will be the development of a statement of needed transition services; and
- * the school will invite your child.

When your child is sixteen (or younger, if appropriate), the notice must:

- * state that the purpose of the meeting is the consideration of needed transition services;
- * state that the school will invite your child; and
- * identify any other agency that will be invited to send a representative.

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

- instruction in Braille and the use of Braille, unless inappropriate, if your child is blind or visually impaired;
- the communication needs of your child;
- your child's language and communication needs if he or she is deaf or hard of hearing; and
- any need for assistive technology devices and services.

What additional factors under FAPE does the IEP team consider?

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

- **Assistive technology (AT).** The school will ensure that AT devices or services, or both, are made available if required as part of your child's special education, related services, or supplementary aids or services. On a case-by-case basis, the use of school-purchased or leased AT devices in the child's home or other setting are required if your child's IEP team decides that your child needs access to those devices in order to receive FAPE.
- **Charter schools.** A child with a disability who attends a public charter school must be served in the same manner as a child with a disability in other public schools.
- **Extended school year (ESY) services.** ESY services consist of special education and related services provided:
 - beyond the normal school year;
 - according to your child's IEP;
 - at no cost to you; and
 - according to state standards.



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

- **Hearing aids.** The school will ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- **Length of school day.** The school day of your school-age child will be the same length as that of a school-age child without a disability unless his or her IEP specifies otherwise. A preschool child with a disability must be provided a five and one-half hour day if determined appropriate by the IEP team.



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

Children with and without disabilities will share the same transportation unless your child's IEP requires specialized transportation.

What type of information is included in an IEP?

The IEP will include specific statements about the following information:

- ▶ **Present levels of educational performance.** This statement, written in objective measurable terms, when possible, describes:
 - how your school-age child's disability affects his or her involvement and progress in the general curriculum;
 - how the disability affects your preschool child's participation in appropriate activities; and
 - what other educational needs result from the disability.
 Any test scores, if not easy to understand, should be explained.
- ▶ **Transition service needs.** Beginning at age 14 (or younger, if appropriate), the team will discuss your child's goals and how he or she will prepare for adult life. The IEP then must include a statement regarding transition service needs that focus on your child's course of study. This statement may include consideration of advanced-placement courses or a career and technical (vocational) education program. If your child is pursuing a modified standard diploma, the IEP team must consider his or her need for occupational readiness at graduation. Specifically, the team may consider courses to prepare your child for completing a career and technical education program.
- ▶ **Transition services.** Beginning at age 16 (or younger, if appropriate), the IEP must include a statement of the needed transition services for your child, including, if appropriate, a statement of interagency responsibilities or any needed linkages. Transition services are based on individual need, taking into account individual preference and interest. They include such activities as instruction, related services, and community experiences. If a participating agency does not provide the transition services described in your child's IEP, the school will call a meeting of the IEP team to identify other ways to meet the transition goals.
- ▶ **Measurable annual goals.** The IEP must state measurable annual goals for your child, meaning what the team believes he or she reasonably can accomplish in a year. This statement of annual goals includes:
 - individual steps that make up the goals (often called short-term objectives); or
 - major milestones (often called benchmarks).
 The goals must relate to meeting the needs that result from your child's disability. They also must help your child to be involved and progress in the general curriculum.

General Curriculum

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

Participating Agencies

Participating agencies may include

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



- **Measuring progress.** The IEP must state:
 - how your child's progress toward the annual goals will be measured;
 - how you will be regularly informed of that progress (for example, periodic report cards);
 - how often you will be informed of that progress (as often as a parent of a child without a disability is informed);
 - what progress your child has made toward the annual goals; and
 - whether that progress is enough to meet the goals by the end of the year.

- **Participation in state and division-wide assessments.** The IEP must include a statement explaining:
 - any accommodations or modifications for the state or division-wide tests;
 - reasons for your child's nonparticipation in the state or division-wide tests;
 - how your child's nonparticipation in these tests will affect his or her promotion, graduation with a modified standard or advanced studies diploma, or other matters; and
 - how your child will be assessed in each area of nonparticipation, including whether he or she will participate in the Virginia Alternate Assessment Program (VAAP) if your child is not participating in any part of the SOL assessment.

In addition, the IEP must state that, for those (who entered ninth grade in 1999-2000 or earlier) still participating in the Literacy Passport Testing Program (LPT), the team has reviewed any decision to postpone or exempt your child from participation in the LPT.

- **Special education and related services to be provided.** This statement also includes changes to the program or supports for school personnel that will be provided for your child to:
 - advance appropriately toward attaining the annual goals;
 - be involved and progress in the general curriculum; and
 - participate with other children with disabilities and children without disabilities in the general curriculum as well as extracurricular and nonacademic activities.

- **Dates and location.** The IEP must state:
 - what month, day, and year the services and modifications will start;
 - how often they will be provided;
 - where they will be provided; and
 - how long they will last.

- ▶ **Nonparticipation with children without disabilities.** The IEP must include an explanation about the extent of your child's nonparticipation in regular education classes and activities.
- ▶ **Rights at age of majority.** At least one year before your child reaches the age of majority (18), the IEP must include a statement that your child has been informed of the rights that will transfer from you to your child at age 18. You may, however, continue to make educational decisions for your adult child through either guardianship procedures, a power of attorney, or certification. For more information on the transfer of rights, you may refer to "Transfer of Rights for Students with Disabilities Upon Reaching the Age of Majority in Virginia" on the VDOE Web site at <http://www.pen.k12.va.us/VDOE/Instruction/Sped>.

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

Your child must participate in either:

- ▶ the SOL assessments; or
- ▶ the Virginia Alternate Assessment Program (VAAP).

In grades 3, 5, and 8, your child must participate in one of the SOL assessments (English, mathematics, history and social sciences, or science).

In order to take the alternate assessment, your child must meet the criteria for participating in the Virginia Alternate Assessment Program. For more information on this program, you may refer to the VDOE Web site.

Any child taking a high school course for which there is an end-of-course SOL assessment must take that SOL assessment.

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

How are IEP decisions made?

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

Standards of Learning (SOL) set expectations for teaching and learning. They are statements of knowledge and skills that all children are expected to learn and use in solving day-to-day problems and in becoming productive citizens. Student learning is measured through the Standards of Learning assessments in grades 3, 5, and 8, and for certain courses in high school. For more information on the Standards of Learning and the SOL assessments, you may refer to the VDOE Web site.

The Virginia Alternate Assessment Program (VAAP) is the measurement of student performance for individuals with disabilities who are unable to participate in statewide assessments, even with accommodations. The VAAP measures student performance on measurable IEP goals. Student performance and supporting evidence are called collection of evidence. For more information on the VAAP, you may refer to the VDOE Web site.

Are the IEP requirements different for students in correctional facilities?

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

- A representative from a state, regional, or local adult or juvenile correctional facility may be on the IEP team.
- The IEP team of a student convicted as an adult may change the IEP or services if the correctional facility convinces the team that an IEP provision or service poses a risk to the student or others.
- IEP requirements regarding state assessments or alternate assessments do not apply. However, if the student is working toward a modified standard, standard, or advanced studies diploma, he or she must take and pass any assessments required for the diploma.
- IEP requirements regarding transition planning and services do not apply for students whose eligibility will end before their release from the facility.

Placement

How is placement decided?

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

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

What does least restrictive environment (LRE) mean?

LRE means that children with disabilities are educated with children without disabilities to the maximum extent appropriate. Your child must not be placed in special classes or separate schools unless education in regular education classes with aids and services cannot be achieved satisfactorily.

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

Administration of Education in Correctional Facilities

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

- * Department of Correctional Education, which administers education programs in both state adult (under the Department of Corrections) and state juvenile (under the Department of Juvenile Justice) facilities;
- * Local school divisions, which administer education programs in their regional or local adult jails; and
- * Virginia Board of Education, which administers education programs in regional or local juvenile detention facilities through a contract with the school division.

Comprehensive Services Act (CSA)

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

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

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

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

This continuum of alternative placements also:

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



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

If your child is placed at either Virginia school, the school division that placed the child will have responsibility for complying with the special education laws. To that end, the placing school division will contract with the state school and review that contract each year to ensure the provision of special education and related services to your child.

What are the staffing requirements for school divisions?

Virginia special education law sets certain staffing requirements for schools. When children with disabilities are removed from regular classes for special education and related services, they may receive services with children with the same or different disabilities. Each child must receive special education

services from personnel assigned as listed in the Appendix. Qualification requirements for interpreters are also found in the Appendix.

Personnel providing services to a child who has more than one disability are not required to be endorsed in all areas of the child's disabilities. However, the child must receive some services for each disability from appropriately endorsed personnel.

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



Likewise, eligible preschool-aged children may receive services together with other preschool-aged children with the same or different disabilities. Personnel assignment requirements and the maximum special education caseloads for personnel serving preschool-aged children with disabilities are listed in the Appendix.

In school divisions and private special education schools for all children with disabilities, alternative staffing plans must receive approval from the Department of Education. However, these plans will not be approved if the number of staff positions is reduced. If requested, the school will make information on alternative staffing plans available to you or to the teacher. More information is found in the Appendix.

Private School Placement - By IEP or CSA Team

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

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

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

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

Private School Placement - By Parents When There Is No Disagreement

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

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

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

- each school division must locate, identify, and evaluate these children with the help of a representative from private schools and home schools;
- these children do not have a right to receive some or all of the special education and related services that public school children would receive;
- each school division must develop a plan for how it will serve these children according to a funding formula and after meeting with representatives from private schools and home-schools;
- decisions about the services that will be provided, including location of services and transportation, are made by the school division according to its plan; and
- the school division will develop and carry out a services plan for these children.

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

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

Virginia Department of Education (<http://www.pen.k12.va.us>)



Home instruction

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

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

For more information on home-schooling, you may refer to the VDOE Web site (<http://www.pen.k12.va.us/VDOE/Parents/hmistatu.pdf>).

Private School Placement - By Parents When There Is Disagreement

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

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

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

To receive full reimbursement, you must inform the IEP team at the most recent meeting that you are rejecting the placement proposed by the school, and you must also state your concerns and your intent to enroll your child in a private school at public expense or give notice to the school at least 10 business days before you remove your child from the public school.

A hearing officer may reduce or deny the full reimbursement if you did not make your child available for evaluation or if you acted unreasonably.

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

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



UNDERSTANDING PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

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

Prior Written Notice

The school must provide you notice that explains in writing:

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

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

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

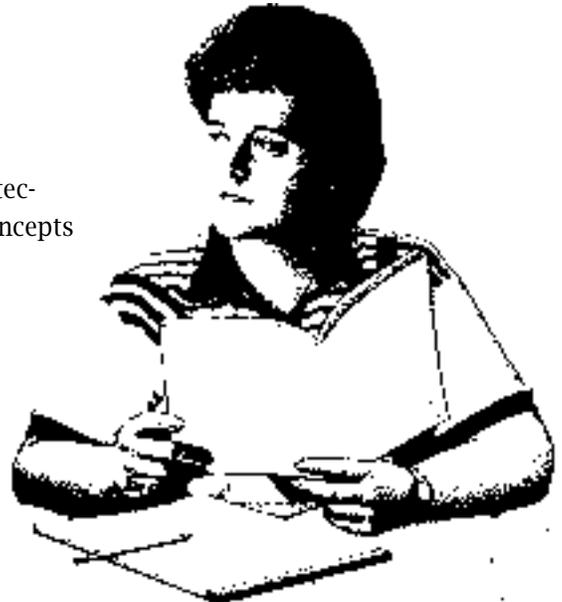
What information is in prior written notice?

The notice must include:

- a description of the action proposed or refused by the school;
- an explanation of the school's proposal or refusal to take the action;
- a description of any other options the school considered and the reason(s) for rejecting those options;
- a description of each evaluation procedure, test, record, or report the school used as a basis for the action;
- a statement that you as a parent of a child with a disability have protection under the procedural safeguards;
- information on how to get a copy of the procedural safeguards (if it is not included); and
- sources for you to contact in order to get help in understanding the content of the notice.

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

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



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

Procedural Safeguards Notice

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

When will I be given a procedural safeguards notice?

A copy of the procedural safeguards notice must be given to you at the following times:

- initial referral for evaluation;
- each notification of an IEP meeting;
- reevaluation of your child;
- receipt of a request for a due process hearing; and
- notification of a decision to take disciplinary action.



What information is in the procedural safeguards notice?

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

- independent educational evaluations;
- prior written notice;
- parental consent;
- your access to your child's school records;
- opportunities to present a complaint and/or to initiate a due process hearing;
- your child's placement during a due process hearing;
- procedures for students who are subject to placement in an interim alternative educational setting as a result of disciplinary action;
- requirements for your unilateral placement of your child in a private school at public expense;
- mediation;
- due process hearings, including requirements for disclosure of evaluation results and recommendations;
- civil actions;
- attorneys' fees; and
- state complaint procedures, including timelines and a description of how to file a complaint with the VDOE.

You may find a copy of this notice, "Virginia Special Education Procedural Safeguard Requirements Under the Individuals with Disability Education Act," on the VDOE Web site. Translations in some foreign languages are available from the VDOE.

Parental Participation in the Special Education Process

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

What does not qualify as a meeting?

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

May I audio record the IEP meeting?

Special education law allows the use of audio recording devices under certain conditions.

- ▶ You must inform the school if you plan to record the meeting with a tape recorder. If you do not inform the school, you must provide a copy of the audio recording to be included in your child's school record.
- ▶ You must provide your own tape recorder and other recording supplies.
- ▶ If the school records the meeting or receives a copy from you, the audio recording is included in your child's school record.

May I video record the IEP meeting?

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



Notice of a Meeting

Notice of a meeting must include the purpose, date, time, and location of the meeting as well as a list of those who plan to attend. The school also will inform you that you, as well as the school, may invite other individuals to participate in the meeting who have knowledge or special expertise regarding your child. The person inviting another individual decides whether that individual has knowledge or special expertise.

Parental Consent

When does the school need my permission?

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

- conduct any evaluations which would be used to qualify your child for special education;
- change the identification of your child;
- place your child for the first time in a program providing special education and related services;
- change your child's IEP or placement, including any partial or complete ending of special education or related services;
- release information from your child's school record to non-school personnel; or
- access your private insurance.

Your consent is not required before:

- the review of existing data to be used as part of an evaluation or a reevaluation;
- the administration of a test or other evaluation that is administered to all children unless consent is required of parents of all children;
- the administration of a test used to measure progress on your child's goals if included in the IEP;
- a teacher's or related service provider's observations or ongoing classroom evaluations;
- the graduation of your child with a standard or advanced studies diploma; or
- a reevaluation if you fail to respond to a request for reevaluation and if the school can show that it has made reasonable attempts to get your consent.

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

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

What happens if I change my mind?

If you change your mind, or withdraw your consent, your action is not retroactive. Therefore, withdrawing consent can not undo any action that already has taken place. For example, your child's eligibility for special education cannot be ended without following termination procedures. Withdrawing consent does, however, prevent action in the future.

Consent

Consent means that:

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

Confidentiality of School Records

Are my child's records confidential?

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

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

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

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

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

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

The school may charge a copying fee but must provide copies of records at no cost if you cannot review them at school. No fee for researching or getting information will be charged.



School Records

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

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

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

TIMELINE

The school must respond to your request for access to your child's school records within 45 calendar days of the request or sooner if the request involves an IEP meeting or a due process hearing.

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

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

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

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

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

What is personally identifiable information?

Personally identifiable information means information that includes the following:

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

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

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



Procedures for Resolving Disagreements

What happens if I disagree with school personnel?

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

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



Mediation

What is mediation?

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

How is mediation conducted?

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

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

Under what conditions is mediation held?

The mediation process must meet certain conditions.

- Mediation must be voluntary on the part of both the school and you.
- Mediation must not be used to deny or delay your right to a due process hearing or any other rights you are afforded.
- Each mediation session must be scheduled in a timely manner and held in a location convenient to the parties in the dispute.
- If an agreement is reached by the parties, the mediation process must conclude with a written agreement.

- 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. In addition, the parties to the mediation process may be required to sign a confidentiality pledge before the beginning of the mediation process.
- If you choose not to use the mediation process, the school may establish procedures to request you to meet at a time and location convenient to you, with a qualified, neutral person. The purpose of this meeting is to explore the benefits of (and encourage you to use) the mediation process. However, the school may not deny or delay your right to a due process hearing if you choose not to participate in this meeting.
- The VDOE pays for the cost of mediation, including costs arising from the school's request for parents to meet with a neutral person, as explained above.

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

Due Process Hearing

What is a due process hearing?

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

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

Under what circumstances is a due process hearing held?

You may request a due process hearing if you disagree with your child's identification, evaluation, or educational placement or the provision of a free appropriate public education. In addition, a school has the right to initiate:

- a due process hearing if you refuse to give consent for an action that requires parental consent; or
- an expedited hearing if the school believes that it is dangerous for your child to be in the current placement following a disciplinary action. During the hearing the school may request placement in an interim alternative educational setting (IAES) until the due process proceedings are concluded.



Expedited Hearing

Expedited hearing means a hearing that is held without delay.

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

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

How do I obtain a due process hearing?

The procedure for initiating a due process hearing begins with sending a request for a hearing in writing to the school with a copy to the VDOE. The notice of request must include the following information:

- the name of your child;
- the address of the residence of your child;
- the name of the school your child is attending;
- a description of your child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to you at the time you prepare the notice.



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

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

For further information about the due process hearing, contact the VDOE to request a copy of the booklet entitled "The Special Education Due Process Hearing: A Handbook for Parents and School Administrators" or refer to the VDOE Web site. You may view online a sample form for requesting a due process hearing. You also may get a sample form for this request, although not required, from the school or the VDOE.

T I M E L I N E

The hearing officer will complete the hearing within:

- * 45 calendar days from the receipt of the request for a due process hearing; or*
- * 20 business days from the receipt of the request for an expedited due process hearing.*

You or the school may file an appeal within one year of the date of the hearing officer's decision.

Complaint

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

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

- a statement that a specific violation of special education law has occurred within a year prior to the date the complaint is received unless a longer period is reasonable because:
 - the violation is continuing; or
 - the complaint involves compensatory services for a violation that occurred not more than 3 years prior to the date the complaint is received;
- the facts on which the statement is based; and
- all relevant documents.



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

If the VDOE finds that the school failed to provide your child with appropriate services, the VDOE must address how those services will be remediated, including, as appropriate:

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

The VDOE must resolve the complaint within 60 calendar days of receipt. Either the school or you have the right to appeal the VDOE findings through the VDOE complaint appeal procedures within 30 days of the decision.

For further information on complaint procedures, contact VDOE to request a copy of the brochure, "Complaint Procedures for Special Education," or refer to the VDOE Web site (<http://www.pen.k12.va.us/VDOE/Instruction/duprocess.html>). You may view a sample complaint form online. You also may get a sample complaint form, although not required, from the school or the VDOE.

T I M E L I N E

The VDOE must resolve the complaint within 60 calendar days of its receipt. You or the school may appeal the VDOE findings within 30 days of the decision.

Discipline of Students with Disabilities

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

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

There are two types of disciplinary actions the school may take when a child has broken a school rule: short-term removal (10 school days or less) and long-term removal (more than 10 school days).

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

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

- conduct a manifestation determination;
- provide services; or
- conduct a behavioral assessment.

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

- the nearness of the suspensions to one another;
- the length of each suspension; and
- the total number of days of the suspensions.

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

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

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

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



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

An FBA is a process to determine the underlying cause or functions of a child's behavior that interferes with the learning of the child with a disability or the learning of his or her peers.

A BIP uses positive behavioral interventions and supports to address behaviors that:

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

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

What are the school's responsibilities after a short-term suspension that does not amount to a pattern?

The school must develop a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP). If your child has a BIP, then:

- the IEP team meets once to review the BIP; and
- for each time afterwards, the IEP team reviews the BIP, but does not have to meet unless a team member believes that changes are needed in the plan.

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

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

A series of short-term suspensions may constitute a change in placement based on the following factors:

- the nearness of the suspensions to one another;
- length of each suspension; and
- the total amount of time your child is suspended.

If a series of short-term suspensions constitutes a pattern, it is considered a change in placement, and the same procedure applies as with long-term suspensions and expulsions.

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

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

- carrying a weapon to or possessing a weapon at school or a school function; or
- possessing or using illegal drugs or selling or soliciting the sale of a controlled substance while at school or a school function.

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

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

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

For a long-term removal the IEP team must:

- conduct a FBA if your child does not have one in place;
- develop a BIP if your child does not have one in place (if your child has a BIP, the IEP team will review and, if appropriate, change the plan);
- conduct a manifestation determination review; and
- reaffirm or revise the IEP placement and/or services.

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



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

- consider all relevant information, including:
 - evaluations and diagnostic results;
 - relevant information supplied by you;
 - observations of your child; and
 - his or her IEP and placement;
- determine, in relationship to your child's behavior subject to the disciplinary action, that special education and related services were appropriate and provided consistent with his or her IEP and placement;
- determine that your child's disability did not impair his or her ability to understand the impact and consequences of the behavior subject to the disciplinary action; and
- determine that your child's disability did not impair his or her ability to control the behavior subject to the disciplinary action.

What happens if there is no manifestation of disability?

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

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

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

If you disagree with the IEP team's decision, you may request an expedited due process hearing.

What happens if there is a manifestation of disability?

If it is decided that your child's disability did cause the behavior, then he or she may not be removed from the current educational placement except through the IEP process. The IEP team also is responsible for developing or modifying strategies, including positive behavioral interventions and supports, to address the behavior.

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

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

- you have expressed your concern in writing (or verbally if you cannot write or have a disability that prevents you from writing) that your child needs special education and related services;
- the behavior or performance of your child shows the need for these services;
- you have requested an evaluation for your child to receive special education and related services; or
- a teacher or other school personnel have expressed concern about the behavior or performance of your child to the special education administrator of your school during the school's Child Find or referral process.

In these situations, the school:

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

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

For more information about discipline, you may refer to the VDOE Web site (http://www.pen.k12.va.us/VDOE/Instruction/Sped/sped_discipline.pdf) for "Discipline of Students with Disabilities - Technical Assistance Resource Document."

Use of Public or Private Insurance

Can the school use insurance to pay for services?

A school may use Medicaid, or other public insurance benefits programs in which your child participates, to provide or pay for services required by special education law. However, you must consent to release your child's school records to Medicaid before the school can bill.

A school that uses private insurance for services required by special education law must get your consent each time the following occurs:

- the school proposes to access insurance proceeds; or
- the school must release educational information to the private insurance company for billing.

Regardless of whether you have insurance coverage, however, a school is responsible for providing required services at no cost to you.



CLOSING THOUGHTS

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



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

- Talk with other parents of children with disabilities, contact a Parent Resource Center, get involved in a local parent group, and attend workshops to learn more about the education of children with disabilities.
- Attend all meetings concerning your child. Prepare by talking with your child about his or her feelings toward school, by listing your ideas about your child's strengths and weaknesses, your goals for your child, and by making notes about what you want to say during the meeting.
- Ask your child's teacher, the principal, or the special education administrator when you have questions.
- Communicate requests, concerns, or problems in writing and keep a copy for your own records.
- Let your child's teacher(s) know that you want to be involved in your child's education. Make time to talk with the teacher(s) and, if possible, visit the classroom.
- Explain any special equipment, medication, or medical problem your child has.
- Let the teacher(s) know about any activities or big events that may influence your child's performance in school.
- Ask that samples of your child's work be sent home. If you have questions or suggestions, make an appointment with the teacher(s) to talk about new ways to meet your child's goals.
- Ask the teacher(s) how you can build upon your child's school activities at home.
- Encourage behavior that leads to success in school, such as accepting responsibility, following rules, being organized, and being on time.

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

- Volunteer to help in the classroom or school. This will let you see how things work in the school and how your child interacts with others. It also will help the school.
- Remember that you and the school want success for your child. Working together can make this happen.

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



TIMELINES

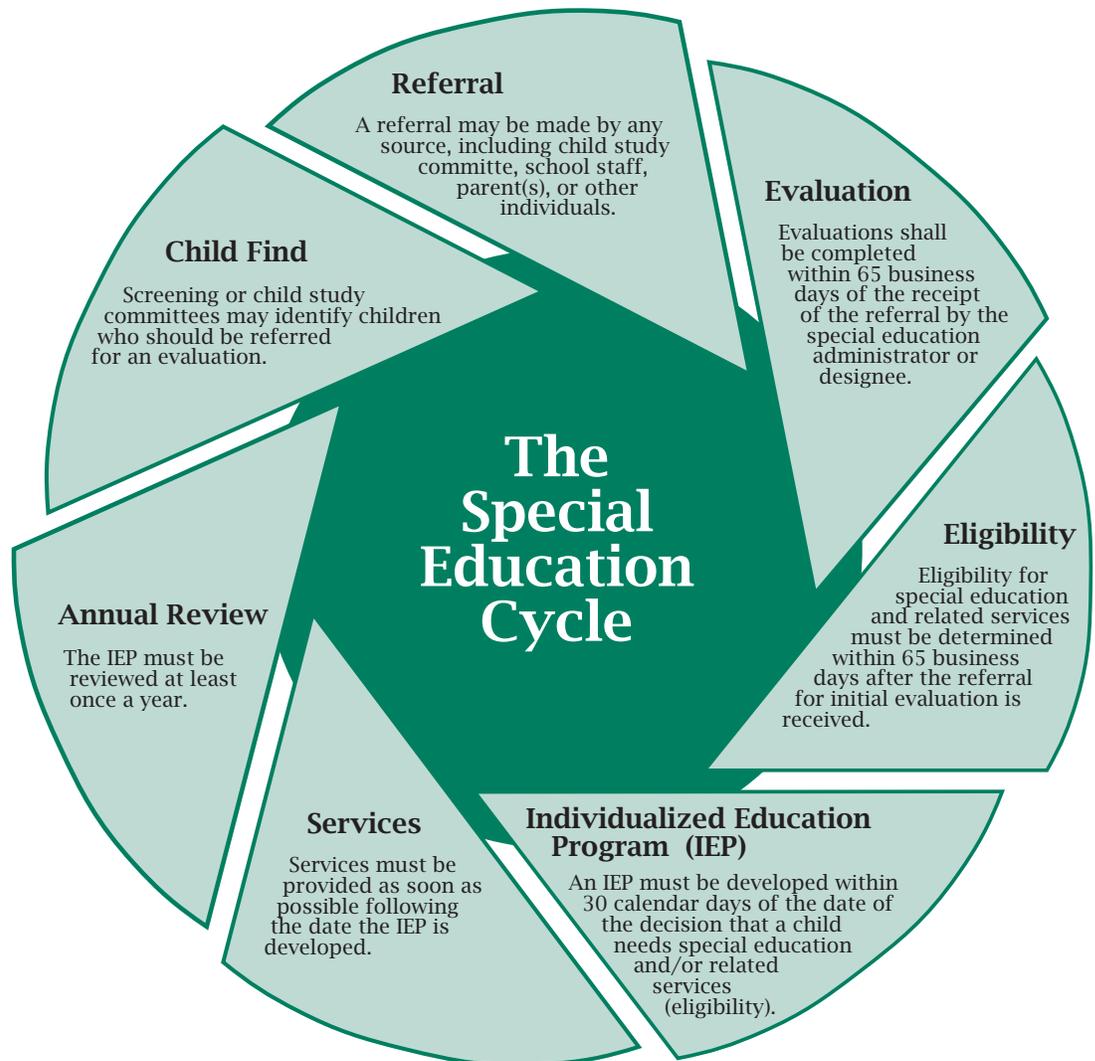
CHILD FIND

SCREENING

- ▶ Schools must screen all children within 60 business days of initial enrollment in public school in certain areas to determine if a referral for an evaluation for special education and related services is indicated.
- ▶ Any child suspected of having a disability as a result of a screening must be referred to the special education administrator no more than 5 business days after the screening.

CHILD STUDY COMMITTEE

- ▶ The child study committee must meet within 10 business days after receiving a referral.
- ▶ A referral must be made to the special education administrator within 5 business days following the determination by the child study committee that your child is suspected of having a disability.



SPECIAL EDUCATION PROCESS

A. REFERRAL AND EVALUATION

- After the special education administrator receives the referral for evaluation, an evaluation must be conducted and eligibility determined within 65 business days.
- If the special education administrator requests a review by the child study committee, the committee review must not delay the 65 business days.

B. ELIGIBILITY DETERMINATION

- A written copy of the evaluation report must be made available to you at least 2 business days before the eligibility meeting.
- Eligibility for special education and related services must be determined within 65 business days after the special education administrator receives the referral for evaluation.

C. INDIVIDUALIZED EDUCATION PLAN

- The IEP must be developed within 30 calendar days of the initial determination of eligibility.
- An IEP meeting must be held no later than 30 calendar days after the school either decides to accept the previous out-of-state school's evaluation and eligibility decision or determines your child's eligibility.

SCHOOL RECORDS

- The school must respond to your request for access to your child's school records within 45 calendar days of the request or sooner if the request involves an IEP meeting or due process hearing.

PROCEDURES FOR RESOLVING DISPUTES

A. DUE PROCESS HEARING

- A hearing officer will complete a hearing within 45 calendar days from the receipt of a request for a due process hearing or 20 business days from the receipt of a request for an expedited due process hearing.
- You or the school may file an appeal within one year of the date of a hearing officer's decision.

B. COMPLAINT

- The VDOE must resolve a complaint within 60 calendar days of its receipt.
- You or the school may file an appeal within 30 days of the VDOE decision.

GLOSSARY

These definitions are taken from the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, effective January 1, 2001.

“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.

“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.

“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.

“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.

“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 (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

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

“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 days” 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 B 4 a.)

“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.

“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” means:

1. The child's initial placement from general education to special education and related services;
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which 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.

“Change in placement,” for the purposes of discipline, means:

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 total amount of time the student is removed; or
 - c. The proximity of the removals to one another.

“Chapter” means these regulations, 8 VAC 20-80-10 *et seq.*

“Charter schools” means any school meeting the requirements for charter as set forth in the *Code of Virginia*.

“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 this chapter, and determined, as a result of this evaluation, to have autism, deaf-blindness, a developmental delay, a hearing impairment including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness, who by reason thereof, needs special education and related services. The term “student” may also be used to refer to a child with a disability.

“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.

“Comprehensive Services Act” (CSA) means the *Comprehensive Services Act for At-Risk Youth and Families* (§ 2.1-745 *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.

“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 and may be revoked any time.

“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.

“Counseling services” means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

“Day” means calendar day unless otherwise indicated as business day or school day.

“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.

“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.

“Developmental delay” means a disability affecting a child ages two through eight:

1. 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; and
2. Who, by reason thereof, needs special education and related services. (Eligibility as a child with a developmental delay.) (8VAC 20-80-56F)

“Direct services” means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements.

“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.

“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.

“Education records” means 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).

“Emotional disturbance” 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 disturbance.

“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 as described in 8 VAC 20-80-54.

“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.

“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.

“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.

“Hearing officer”: see *“Impartial hearing officer.”*

“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.

“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.

“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.

“Impartial 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 or agreement between the parties. The implementation plan shall include the name and position of the individual in the local educational agency charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

“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.

“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.

“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.

“Interpreting” means translating from one language to another (e.g., sign language to spoken English); for the purposes of this chapter, this includes oral interpreting and transliterating for signed English systems or for cued speech/cued language.

“Interpreting personnel” means individuals providing educational interpreting services who meet the qualifications set forth under 8 VAC 20-80-45 E.

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

“Learning disability”: see “Specific learning disability.”

“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.

“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.

“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 and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

“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.

“Mental retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance.

“Multiple disabilities” means two or more impairments at the same time (for example, mental retardation - blindness, learning disability - orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

“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).

“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.

“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).

“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:

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:

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 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 (e.g., club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

“Other health impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that (i) is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder or attention deficit hyperactivity disorder, and diabetes; and (ii) adversely affects a child’s educational performance.

“Paraprofessional” means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

“Parent or parents” means a natural or adoptive parent or parents of a child, a guardian, a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare), a foster parent under the circumstances described below, or a surrogate parent who has been appointed in accordance with this chapter. The term means either parent, unless the local educational agency has been provided with evidence that there is a legally binding instrument, state law, or court order that has terminated the parent’s or parents’ rights. A foster parent may also serve as a parent:

1. If the natural parent’s or parents’ authority to make educational decisions on the child’s behalf has been extinguished under § 16.1-283, § 16.1-277.01 or § 16.1-277.02 of the *Code of Virginia* or a comparable law in another state;
2. The child is in permanent foster care pursuant to § 63.1-206.1 of the *Code of Virginia* or comparable law in another state; and
3. The foster parent or parents (i) have an ongoing, long-term parental relationship with the child; (ii) are willing to make the educational decisions required of the parent or parents under this chapter; and (iii) have no interest that would conflict with the interests of the child.

The term “parent or parents” does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency.

“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.

“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.

“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 20-80-66 A.

“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.

“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.

“Qualified personnel” means personnel who have met Virginia Department of Education approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service and Virginia licensure requirements as designated by Virginia law or regulations.

“Recreation” includes:

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

“Reevaluation” means completion of a new evaluation in accordance with this chapter.

“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.

“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 and transliterating; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation and psychological counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health services; social work services in schools; and parent counseling and training. 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.

“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.

“School health services” means services provided by a qualified school nurse or other qualified person.

“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 (29 USC § 701 *et seq.*), which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance.

“Severe disability” means a primary disability that:

1. Severely impairs cognitive abilities, adaptive skills, and life functioning;
2. May have associated severe behavior problems;
3. Has the high probability of additional physical or sensory disabilities; and
4. Requires significantly more educational resources than are provided for the children with mild and moderate disabilities in special education programs.

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

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.

“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:

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

“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; and
2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

“Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or 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; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

“Speech or language impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

“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.

“State assessment program” means the state assessment program in Virginia under the *Individuals with Disabilities Education Act* (20 USC § 1400 *et seq.*) that is the component of the state assessment system used for accountability.

“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. This does not include the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

“Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter.

“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.

“Transition services” means a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. 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.

“Traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term 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.

“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).

“Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton” or **“Virginia schools”** means the Virginia schools authorized by the Virginia Board of Education and administered and supervised by the Superintendent of Public Instruction.

“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.

“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.

APPENDIX

The following information is taken from the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, effective January 1, 2001.

Staffing

Figure A. Special education personnel assignment requirements for school-aged children, ages five to 21, inclusive, in local school divisions.

<i>Disability Category</i>	<i>Endorsement</i>
Autism	any special education endorsement, as appropriate to student needs
Deaf-blindness	severe disabilities K-12 or any other special education endorsement, as appropriate to student needs
Developmental Delay: ages 5 - 8	any special education endorsement, as appropriate to student needs
Emotional Disturbance	emotional disturbance K-12
Hearing Impairment/Deaf	hearing impairments preK-12
Learning Disabilities	learning disabilities K-12
Mental Retardation	mental retardation K-12
Multiple Disabilities	severe disabilities or any other special education endorsement, as appropriate to student needs
Orthopedic Impairment	any special education endorsement, as appropriate to student needs
Other Health Impairment	any special education endorsement, as appropriate to student needs
Severe Disabilities	severe disabilities K-12
Speech or Language Impairment	speech or language disorders preK-12
Traumatic Brain Injury	any special education endorsement, as appropriate to student needs
Visual Impairment	visual impairments preK-12

Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)

Figure B. Special education personnel assignment requirements for preschool children, ages two to five, inclusive, in local school divisions.

<i>Disability Category</i>	<i>Endorsement</i>
Developmental Delay: ages 2 - 5	early childhood special education
Hearing Impairment/Deaf	hearing impairments preK-12
Speech or language impairment	speech or language disorders preK-12
Visual Impairment	visual impairments preK-12
All other disability categories	early childhood special education

*Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)
(8 VAC 20-80-45)*

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

<i>Disability Category</i>	<i>Level II</i>		<i>Level I</i>
	<i>With Paraprofessional 100% of the time</i>	<i>Without Paraprofessional 100% of the time</i>	
Autism	8	6	24
Deaf-blindness	8	6	0
Developmental Delay: age 5 - 8	10	8	0
Developmental Delay: age 2 - 5	8 Center Based 10 Combined	12 Home Based and/or Itinerant	
Emotional Disturbance	10	8	24
Hearing Impairment/Deaf	10	8	24
Learning Disability	10	8	24
Mental Retardation	10	8	24
Multiple Disabilities	8	6	0
Orthopedic Impairment	10	8	24
Other Health Impairment	10	8	24
Severe Disabilities	8	6	0
Speech or Language Impairment	0	0	68 (itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services.	20 Points (see Figure 2)		

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

<i>Disability Category</i>	<i>Level II Values</i>		<i>Level I Values</i>
	<i>With Paraprofessional 100% of the time</i>	<i>Without Paraprofessional 100% of the time</i>	
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental Delay: age 5 - 8	2.0	2.5	1
Emotional Disturbance	2.0	2.5	1
Hearing Impairment/Deaf	2.0	2.5	1
Learning Disability	2.0	2.5	1
Mental Retardation	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
Severe Disabilities	2.0	2.5	1
Traumatic Brain Injury	2.0	2.5	1

Other Staffing Information -

A.3.b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

- (1) A building average is computed by dividing the total weights (found in Appendix A) 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 and more than one subject area and level are taught.

(8 VAC 20-80-45 A 3)

D. Alternative special education staffing plan. Local school divisions and private special education schools may offer an alternative staffing pattern that ensures the requirements of this chapter are met. An alternative staffing plan that reduces the number of staff positions will not be acceptable. If the local school division or private special education director plans to implement a different staffing pattern from those specified in this chapter, the local school division superintendent, or private special education school director, shall receive approval to implement an alternative staffing plan from the Virginia Department of Education in accordance with the procedures established by the Virginia Department of Education. Information on alternative staffing plan requests and approvals shall be available to teachers and parents.

(8 VAC 20-80-45 D)

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services are as follows:
 - a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation), or any other state or national certification 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 or cued language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).
 - c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics.

2. Personnel who provide interpreting services for children who use sign language or cued speech or cued language and who do not hold the required qualifications may be employed in accordance with all of the following criteria:
 - a. Personnel shall have a Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard-of-Hearing, upon hiring date in any local educational agency in Virginia;
 - b. Personnel shall achieve the qualification requirements by the third anniversary of their hiring date in any local educational agency in Virginia; and
 - c. The local educational agency shall annually inform the Virginia Department of Education of: (i) the person's name, social security number, and hiring date; (ii) the person's progress toward meeting the qualification requirements; and (iii) the person's development plan.
3. Waiver of qualification requirements for personnel providing interpreting services.
 - a. Conditions for requesting a waiver.
 - (1) The local educational agency superintendent or director of a private special education school that is licensed or has a certificate to operate shall request a waiver of the qualification requirements for personnel who do not meet the qualification requirements for providing interpreting services. The request shall include a statement certifying that the local educational agency or private special education school has recruited personnel who meet the qualification requirements and has not had three or more applicants who hold at least a VQAS Level I.
 - (2) A waiver may be provided for personnel who do not hold the qualifications in subdivision 2 a of this subsection, and who hold interpreting credentials from another state or who have registered to take the VQAS, and who take the assessment as scheduled. The waiver shall be in place only until the local educational agency receives the notice of equivalency of the out-of-state credential or of the attainment of the VQAS level. The waiver shall not be extended if a VQAS Level I, or higher, is not obtained.
 - (3) A waiver may be provided for one year for individuals who have not attained the qualification requirements in subdivision 2 b of this subsection and who hold a VQAS Level II. This waiver may be provided for one additional year if the individual continues to hold a VQAS Level II and has shown improvement in percentage scores.
 - b. Timeline for requesting a waiver. A request to waive the qualification requirements shall be submitted to the Virginia Department of Education within 30 days of the person's initial or continuing assignment to provide interpreting services, using a form authorized by the Virginia Department of Education.

(8 VAC 20-80-45 E)

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Terms in bold italics are defined in the side bars of this guide.

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