

# Guidelines for the Consideration of the Need for Age and Developmentally Appropriate Instruction

## Legislation

During the 2020 Virginia General Assembly session, legislation passed requiring individualized education program teams to consider the need for certain age-appropriate and developmentally appropriate instruction. The full text of the bill is as follows.

**Be it enacted by the General Assembly of Virginia:**

**1. *That the Code of Virginia is amended by adding a section numbered 22.1-217.03 as follows: § 22.1-217.03. Individualized education program teams to consider need for certain age-appropriate and developmentally appropriate instruction***

*A. The Department of Education shall establish guidelines for individual education program (IEP) teams to utilize when developing IEPs for children with disabilities to ensure that IEP teams consider the need for age-appropriate and developmentally appropriate instruction related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others.*

*B. In developing IEPs for children with disabilities, in addition to any other requirements established by the Board, each local school board shall ensure that IEP teams consider the guidelines established by the Department of Education pursuant to subsection A.*

## Purpose

The purpose of this document is to provide school divisions a framework for the development of operating guidelines tailored to local resources and service delivery models. This

document does not replace any federal or state regulations. Additionally, this information is provided to assist IEP teams in considerations for instructional planning and implementation in these critical areas. These guidelines are intended to support the IEP team in identifying content areas where specially designed instruction may be required. Addressing these critical areas through specially designed instruction may reduce the likelihood of behaviors that can lead to negative consequences including social isolation, misinterpretation or social cues, and victimization.

Additionally, inappropriate sexual behaviors may not only limit an individual with intellectual or developmental disabilities's social involvement, but also could lead to incarceration (Palucka, Raina, Liu & Lunsky, 2012). Conversely, being a victim of sexual abuse or sexual assault can have devastating effects on the victim's mental health, and the ability to reach maximum potential for learning and functioning independently in the community (Curtiss, & Kammes, 2020).

These guidelines provide information and context for discussing topics with students, families, and educators. These conversations can sometimes be uncomfortable or difficult, however, when addressed early, through quality and developmentally appropriate instruction, the student can enjoy a lifetime of the benefits of strong social relationships. These conversations can help students develop the necessary skills to make informed decisions about their choices and relationships. Targeted and meaningful education addressing their safety and the safety of others can prevent sexual abuse and challenging behaviors while promoting a variety of healthy relationships and healthy behaviors.

## **Underlying Assumptions**

All individuals have the right to make their own decisions related to sexuality, relationships (platonic and romantic), personal preferences, reproduction and parenting. Informed decision-making requires access to information that will guide decisions related to relationships, sexual activity, and parenting.

All individuals have a right to a life of their choosing, including their social relationships. All people deserve a life with meaningful social connections and supports and deserve a life free from abuse. As stated in House Joint Resolution No 91. (2020) Regarding the Civil Rights and Dignity of All Virginians,

“ That the Commonwealth remain committed to diversity and fostering an atmosphere of inclusiveness that respects the dignity and worth of every person without regard to race, ethnicity, gender, religion, ancestry, national origin, immigration status, marital status, age, disability, sexual orientation, gender identity, or familial status; and be it RESOLVED FURTHER, that the General Assembly call upon all citizens and residents and state employees to resist and oppose acts of intimidation, bullying, discrimination and violence and support victims of such acts”.

Supports can and should be provided to help individuals who seek social relationships and connection, but lack the skills that foster these relationships both in person and through social media and the internet.

## **Stakeholder Input**

The stakeholders who participated in development of this consideration document include: parents, self-advocates, college support service providers, counselors, leaders from local agencies, and educators. Through their input and careful examination of the legislation, this

document and supporting documents have been developed to address the needs of individuals who have IEPs. The team strongly recommends supplemental documents and resources to provide guidance in the implementation of age and developmentally appropriate specially designed instruction to support the understanding and importance of this process for teachers, parents, and students.

## **Definitions**

**Age Appropriate** refers to content, topics, and instruction that are generally accepted and taught to students based on chronological age. The age level at which it is suitable to teach concepts, information, and skills based on the social, cognitive, emotional, and experience level of most students in that age range (Future of Sex Education, 2020)

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

**Developmentally Appropriate** refers to utilizing both the chronological age and individual needs of the student to develop learning objectives and teaching strategies; commonly referred to as “meeting students where they are emotionally, socially, and cognitively”.

**IEP team** is a group of individuals composed of: the parents of a student with a disability; at least one regular education teacher; at least one special education teacher; a representative of the school division who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; knowledgeable about the general education curriculum; and knowledgeable about the availability of resources of the school division; an individual who can interpret evaluation results; at the discretion of the parent or school division, other individuals who have knowledge or special expertise regarding the

child, including related services personnel as appropriate; and the student that this meeting is about.

**Personal boundaries** with self and others includes the intellectual, emotional, and physical limits an individual has for themselves as well as recognizing others' boundaries to promote safe and healthy relationships across all environments.

**Personal Privacy** is the concept of privacy for self and others in scenarios such as public and private behaviors, daily living skills such as bathing and using the bathroom, internet safety, interpersonal scenarios, and/or engaging in consensual sexual activity.

**Self-Protection** is the understanding of words and actions that promote safety and choice through recognizing uncomfortable or harmful situations and having the ability to take protective action.

**Self-Restraint** is the act of self-control through physical, mental, and emotional regulation.

**Sexual Health** is the physical, emotional, mental, and social well-being in relation to sexuality through human development and human anatomy of sex organs and reproductive organs.

**Specially Designed Instruction** - adapting the content, methodology, or delivery of instruction to:

1. Address the unique needs of the student that result from the student's disability; and
2. Ensure access of the student to the general curriculum, so that the student can meet the educational standards that apply to all students within the jurisdiction of the local educational agency.

## **Considerations Process**

### **The Role of the IEP Team**

Each year, at the student's IEP meeting, the team must consider the need for age-appropriate and developmentally appropriate instruction related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others. In some instances, a behavior or concern may arise between annual IEP meetings. If a behavior is identified and shared by the school to the family or the family to the school, the school or family may convene an IEP meeting to address the concerns.

This consideration process is designed to gather input from a variety of stakeholders to determine if the student requires specially designed instruction related to sexual health, self-restraint, self-protection, respect for personal privacy, and/or personal boundaries of others. This process is for students who have already been determined eligible for special education services through the school division's evaluation and eligibility process.

While some skills and knowledge are addressed specifically in Health and/or Family Life Standards (Virginia Department of Education, 2020), the application of these skills often is not directly addressed. Additionally, the student may not have access to a Family Life Curriculum, depending on where they attend school. When appropriate, the IEP team may choose to utilize these standards to identify critical areas in need of additional support to help ensure that the student develops skills that will allow them to safely participate in adult life. The IEP team may also develop their own goals and strategies that are unique to the student.

Due to the sensitive nature of some of the topics included in this legislation, parent(s) and/or the student may choose to not address any portion of these considerations. The IEP team is responsible for ensuring that the team is aware of the need for this consideration process, and

may document in the Prior Written Notice if the consideration process was refused by the parent(s) or the student. The process provides an opportunity for the team to consider the broad topics outlined in the legislation. The depth of the discussion will vary for each student and should reflect the needs of that student. Additionally, due to the sensitive nature of some of these topics, the team must carefully consider the student's need for privacy and dignity when discussing these topics.

Every child, teenager, and young adult with a disability have the same needs as other typically developing individuals which are: the basic human rights of dignity, respect, safety, and privacy. This also includes obtaining the student's input and voice, as they are able to contribute.

Further, the IEP team should consider the families' cultural beliefs as it relates to the topics of sexual health and safety. Parents should not be required to have a conversation about these topics if they are not comfortable doing so.

That said, any current behaviors that may indicate that a student needs additional instruction to maintain the safety of self and others should be discussed with the IEP team. Students do best when teachers and families are on the same page. When a behavior occurs at school the following steps should be followed to ensure that families are informed, and the team can process together.

### **Considerations**

During the IEP meeting, the team must consider if the student displays a difference or delay in social and/or emotional understanding related to their sexual health, self-restraint skills, self-protection skills, respect for personal privacy and/or their ability to respect the personal boundaries of others that may impact their ability to receive a free appropriate public education.

Please note that this also includes behaviors as it relates to social media and the internet, and not just in-person behaviors.

Given that these considerations are part of the IEP process, all members of the IEP team should be present as outlined in Regulations Governing Special Education Programs for Children with Disabilities in Virginia (2010)(8VAC20-8-110) (34 CFR 300.321(a), (c), and (d)).

The team may choose to utilize Guiding Questions that are more specific to the areas outlined in the legislation. These guiding questions are not exhaustive or prescriptive, but may help facilitate information sharing among team members. Additionally, these guiding questions can be shared with families prior to the meeting to allow time for them to process and gather information.

### **Guiding Question/Indicators**

There is a lack of standardized tests that addresses the specific skills addressed in this legislation. For IEP teams who are considering the need for specially designed instruction and/or accommodations related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries for self; much of the information will come from non-standardized assessments. The grade level Health and Family Life Standards can provide a backbone for curriculum-based assessment, however, much of the information that teams will utilize will come from direct observation. Even for students who have demonstrated proficiency in health and family life content, may not apply that knowledge, or generalize to real life situations and circumstances.

Due to the nature of social interactions and the subtle differences between what can be considered appropriate and inappropriate, assessment of these skills is often an ongoing process with input from a variety of individuals. What may be considered appropriate by a family

member may not be appropriate to a co-worker or a stranger. It is important that the IEP maintain an objective perspective on the behaviors of concern in order to effectively assess and determine instruction.

The following questions may be used to determine if instruction and/or additional assessment is required, when considering the student's need for age and developmentally appropriate instruction. These questions are included in the Self, Health, and Relationship Education (SHaRE) Considerations Guide (see Appendix A) and may help facilitate the conversation and further document the discussion.

- Does the student's behavior related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others prevent them from participating in activities with same-aged peers either in person or over the internet/social media?
- Does the student display deficits in social skills as compared to their same aged peers? This may include difficulty making or maintaining friendships, difficulty with emotional regulation that affects social relationships, and/or inappropriate interactions with peers and adults.
- Does the student's present level of performance indicate deficits in sexual health, self-restraint, self-protection, respect for personal privacy, personal boundaries for self or violation of the personal boundaries of others? If not, is there information that needs to be added to address these concerns?
- Does the student have goals/objectives that relate to social emotional learning related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others?

- Does the student display behaviors that, if not addressed, may affect the student's ability to meet postsecondary goals?
- Does the student display behaviors that, if not addressed, may result in difficult or dangerous social situations or increase the chance of being involved in the criminal justice system at some point?
- Does the student display behaviors that, if not addressed, may make the student more susceptible to abuse?
- Does the student display behaviors that, if not addressed, may result in discipline in the school setting or possible criminal behavior?
- Does the student display behaviors that may lead others to misunderstand or misinterpret their intentions?
- Has the student recently had discipline or team meetings related to an incident regarding the topics of sexual health, self-restraint, self-protection, respect for personal privacy, personal boundaries for self or violation of the personal boundaries of others?
- Do parents have concerns related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others?

### **Considerations Results**

Part I of the SHaRE Consideration Guide provides guiding questions for the IEP team to consider. The first question the team may consider is if the student displays a difference or delay in social and/or emotional understanding related to their sexual health, self-restraint skills, self-protection skills, respect for personal privacy and/or their ability to respect the personal boundaries of others that may impact their ability to receive a free appropriate public education? After considering the guiding questions, the team may decide to move forward in several ways:.

1. The team decides that the student does not require age-appropriate and developmentally appropriate instruction related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others. The team documents this in the IEP and the considerations process is complete.
2. The team identifies one or more areas of concern and decides to gather more data. The team may choose to conduct skill-based assessments, behavioral observation or other forms of information gathering to help inform these goals. During the meeting, the team may utilize the indicators to assist with targeting skills and behaviors during the data collection process. Part II of the SHaRE Considerations Guide provides teams the opportunity to document areas of concern, specific behaviors of concern, and the context for those concerns. This portion of the considerations process will help teams pinpoint and define their specific concerns that may require additional data.

Part II of the SHaRE Considerations Guide also provides teams an opportunity to discuss current strategies and supports that are in place. This may include behavior intervention plans, specially designed instruction, reinforcement systems, assistive technology or other supports or services the student receives relevant to the concerns. The team may also discuss and plan for any additional data that is needed to move forward.

Part II of the SHaRE Considerations Guide includes space for the team to consider potential instructional goals as well as strategies to achieve those goals. The team may also discuss implementing strategies, making changes to the IEP, or gathering additional data. This is the action planning portion of the considerations process that will inform the development of IEP goals, services, accommodations, and modifications to meet the student's needs.

1. The team utilizes existing data to identify specific areas of need in one or more of the areas listed above and develop goals, identify accommodations, and list services in the IEP.

### **Assessment Considerations**

If the team identifies one or more areas of concern and determines that additional data is required, the team may choose to conduct skill-based assessments, behavioral observation, or other forms of information gathering to help inform the present level of performance, goals and objectives, specially designed instruction and special education services, and/or accommodations.

#### **Functional Behavioral Assessment (FBA)**

The Regulations Governing Special Education Programs for Children with Disabilities in Virginia (2010) provide that

“functional behavioral assessment means a process to determine the underlying cause or functions of a student’s behavior that impede the learning of the student with a disability or the learning of the student’s peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the [Individualized Education Program] IEP team.”

In addition, the Virginia Regulations describe a “behavioral intervention plan” as a “plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or the learning of others or behaviors that require disciplinary action”(p.47).

While some behaviors of concern may not reach the threshold of requiring disciplinary action, the utilization of a functional behavioral assessment (FBA) can help identify why the student is engaging in problematic or inappropriate behavior and will help inform instructional strategies

for developing more appropriate skills. More information on the FBA process can be found In the [Guidelines for Conducting Functional Behavioral Assessment and Developing Positive Behavior Intervention and Supports/Strategies](#) (Virginia Department of Education, 2015).

Additional assessments are available and may help identify underlying knowledge and skill deficits that can inform instructional goals and strategies. These assessments may address adaptive behavior, communication, social skills, social emotional learning, or other areas that may affect a student's safety.

### **Addressing Difficult Conversations**

In the context of an IEP meeting, teams must consider a variety of information and this process can feel confusing or overwhelming to each person involved. These behaviors and conversations about these behaviors can evoke a variety of reactions including acceptance, embarrassment, worry, confusion, or defensiveness. Therefore, a level of self-awareness should be considered, including the feelings and responses from the family. Considering the need for instruction in sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others can be difficult to address, especially when there are new team members or the behaviors of concern are new. There are several themes to remember when addressing sensitive topics:

1. Remain focused on the student.
  - The goal of the IEP team is to develop goals and services for a student that will help them be successful both at school and after graduation. By staying focused on meaningful outcomes for the student, the team can address barriers in a way that promotes the development of appropriate behaviors and the implementation of positive instructional practices.

2. Be friendly.

- When speaking to families, remain calm and positive when explaining the behavior that occurred. Being negative often may often cause parents to become defensive before you establish the purpose of the meeting. Put them at ease from the beginning. Say hello, smile, and maintain a friendly attitude throughout the conversation. Remember tone of voice can also portray a variety of positive or negative feelings.

3. Inform.

- The sole purpose of talking to families about behavior is to inform. It is important to keep your thoughts, opinions, and advice to yourself. Despite what you may think, sharing ~~them~~ is not helpful. If, however, you are *asked* your opinion after the meeting, then proceed cautiously.

4. Be objective.

- Tell the parent precisely what happened—or what has been happening—that prompted your call. Leave nothing out but add nothing more. Stick only to what you *know* to be true, leaving out any rumor, hearsay, or innuendo.
- You can and should say, “This is the behavior I’m seeing, and any behavior, like this, that interferes with learning or causes harm to self or others needs to be addressed quickly, and as a team.” The plain truth is the most helpful and influential language you can use with families. Ask the family if this behavior occurs at home and if so, how has it been handled in the past.

5. Explain the strategies being used to address the behavior(s).

- After stating the facts of the incident/behavior, let the family know how you are taking care of the problem at school. Include what specific social/emotional behavior is being addressed and what teaching strategies and supports you are using.
- If this is a behavior that cannot be effectively addressed at school, provide the family with recommendations of who may be able to help them in the home environment (e.g., physician, psychologist, church, specific support groups, etc.).
- Conversely, if a family sees a behavior at home, the following steps should be taken by the family (*it is helpful to lay the following groundwork for this communication at the beginning of the school year, and at each IEP meeting*):
  - Identify the behavior: Be clear and specific about what the problem is – for example, what is happening, how often, who is involved and who is affected.
  - Alert the school: Provide as much detailed information about the behavior as possible and as quickly as possible to the school staff.
  - Request a meeting: The sooner a meeting with school staff and/or IEP team happens the quicker interventions can be put in place.
  - At the meeting: Be forthcoming about behaviors, concerns, and questions. The more information that the team has the better the intervention can be.

6. Be timely.

- When there are concerns relating to the aforementioned behaviors, school staff should contact the parents to set up a meeting with the IEP team to address next steps for intervention and instruction.

- Encourage families to share information about behaviors that are seen at home as soon as they occur. This will alert the school of potential behaviors they may see at school.
7. Maintain confidentiality.
- Offer families ways in which to discuss the behaviors that they are witnessing in a confidential, supportive, respectful, and private environment.
  - Make sure ~~that~~ families know that sharing this information will not result in negative interactions with the student at school.
8. Be accurate and honest.
- Knowing the specific behaviors, what it looks like, when it occurs, and the frequency of the behavior will help the school team develop teaching and intervention strategies.
9. Attempt to minimize barriers or concerns.
- Provide the family the opportunity to openly discuss (as they are comfortable) any barriers or concerns they may have as it relates to the behavior, teaching strategies, or information shared. (e.g., This can allow families to discuss cultural, religious, or other preferences they may have).
10. Ease discomfort.
- If a staff or team member is uncomfortable discussing certain topics, role-playing and scripting the conversation the conversation beforehand may ease discomfort.
  - If discomfort remains, a designated leader should be contacted to help identify alternative instructors or to provide support during the difficult conversation.

## **Providing Instruction**

Certain skill deficits and/or behaviors may be addressed throughout the day by a variety of instructors and settings through the implementation of a behavior intervention plan, self-monitoring/ self-management program, and social skills instruction. Development of strategies to address these skills must take into account the dignity of the individual as well as any privacy issues that may arise.

When addressing sensitive topics, the team may decide that specific school personnel are qualified and able to provide instruction in a group or individual format to address these skills. These skills may include social skills related to interpersonal skills, relationship development, appropriate communication, and others.

The team may decide that a more sensitive or private topic may be more appropriately addressed at home. The team may agree that school personnel will support the family to provide instruction by providing resources and helping to develop supports and strategies that can be used in the home. The family may also seek support outside of the school setting to address these skills. These skills may include topics related to hygiene, sexual health, sexuality and/or inappropriate behavior. In most cases, collaboration between the school and family is critical.

The goal is to keep the individual and those around them safe. When challenges exceed the school's capabilities/capacity to meet the goal of safely educating all students, the school should work with partner agencies, parents, and providers to coordinate services and supports to meet the needs of the student.

If the IEP team decides that the student requires instruction in one or more of these areas, the team must also consider who will provide the instruction. Depending on the topic, levels of

support required, and the priorities of the IEP team, the school must consider the appropriateness of providing instruction during the school day.

When deciding who at the school will provide specialized instruction and support, you may want to look for individuals who have at least some of the following characteristics: professionalism, confidence, not easily embarrassed, straightforward, experienced at talking about sexual health and uses plain language, have training in sexual health education, trustworthy, approachable, non-judgmental, able to maintain confidentiality, understands the individual's disability and how it impacts learning, understands and can develop needed supports and can implement evidence based practices to support learning, respects young people and their autonomy, treats them with the dignity and respect that they deserve, and can develop a rapport with the student.

## **Trauma Informed Consideration and Instruction**

According to the Center for Disease Control and Prevention (2020, p.?), “Adverse childhood experiences, or ACEs, are potentially traumatic events that occur in childhood (0-17 years). For example, experiencing violence, abuse, or neglect, witnessing violence in the home or community, having a family member attempt or die by suicide. Also included are aspects of the child’s environment that can undermine their sense of safety, stability, and bonding such as growing up in a household with substance misuse, mental health problems, instability due to parental separation or household members being in jail or prison. ACEs are linked to chronic health problems, mental illness, and substance misuse in adulthood. ACEs can also negatively impact education and job opportunities”.

ACEs have a profound effect on children and teachers can use this information to approach education with understanding and comprehension of physiological, social, emotional, and academic impacts trauma has on children that are the students in our education systems. Promoting a trauma-informed school through the necessary education for your teachers and staff will contribute to fostering relationships that will result in student safety. Although ACEs play a major role in the development of children, educators do not have to know the specific ACE number of the student, but approach all students with a trauma-informed care mindset. The goal for educators is to be aware of potential ACEs and take steps necessary to avoid recreating traumatic events or memories.

According to the CDC (September 2020), the 6 Guiding Principles To A Trauma-Informed Approach are Safety, Trustworthiness/Transparency, Peer Support, Collaboration/Mutuality, Empowerment/Choice, and Cultural, Historical, and Gender Issues. It

is important to think about each of these principles during the considerations process and when providing instruction.

### Safety:

- Consideration Process: The participants in the IEP meeting will do everything possible to ensure that families and students do not feel ~~threatened~~ physically or psychologically threatened.
- Instruction: When providing instruction, instruction will ensure that students will be physically and psychologically safe.

### Trustworthiness/Transparency

- Consideration Process: The IEP meeting will be conducted with transparency. Build and maintain trust among staff, students, and family members of those receiving services.
- Instruction: Decisions about what instruction will take place are conducted with transparency and the goal of building and maintaining trust among staff, students, and family members of those receiving services.

### Peer Support

- Consideration Process: Prior to the IEP meeting, the coordinator will contact the family to share what will be discussed during the consideration process. The school understands that peer support sets the stage for establishing safety and hope, building trust, enhancing collaboration, and utilizing their stories and lived experience to promote recovery and healing. The term “Peers” refers to individuals with lived experiences of trauma, or this may also be family members who have experienced traumatic events. Peers have also been referred to as “trauma survivors.” If there are sensitive subjects that will be

discussed, family members can opt to invite a “peer support person(s)” to support the family.

- Instruction: During instruction, the student will be in an environment that is conducive to safety and support. Prior trauma will be noted and efforts will be made to provide a nurturing environment for all students.

#### Collaboration/Mutuality

- Consideration Process: During the IEP meeting, there is recognition that healing happens in relationships and in the meaningful sharing of power and decision-making between families and the school. The school recognizes that everyone has a role to play in a trauma-informed approach.
- Instruction: Prior to instruction taking place, families will be notified of lessons, skills, and information that will be shared with the student. If there is a concern, teachers and families can review the information and decide on instruction together.

#### Empowerment/ Choice

- Consideration Process: Beginning with the IEP, the school will aim to strengthen the staff, student, and family members’ experience of choice and recognizes that every person’s experience is unique and requires an individualized approach. This builds on what students, staff, and communities have to offer, rather than responding to perceived deficits.
- Instruction: The teaching staff will offer choice whenever possible in location, time, and with whom instruction will be provided.

### Cultural, Historical, and Gender Issues

- Consideration Process: The school will actively move past cultural stereotypes and biases and offer culturally responsive IEP meeting practices, leveraging the healing value of traditional cultural connections, and recognizes and addresses historical trauma.
- Instruction: The teaching staff will maintain cultural, gender, and historical sensitivity and follow the wishes of the family when providing instruction on sensitive topics.

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