



## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-81
<b>Regulation title</b>	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
<b>Action title</b>	Revisions to comply with the “Individuals with Disabilities Education Improvement Act of 2004” and its federal implementing regulations
<b>Date this document prepared</b>	September 4, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The present action proposes substantive changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-80) and promulgate new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student’s individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

In response to public comments received, several provisions that were proposed to be significantly revised, or deleted, have been retained, including regarding parental consent for the termination of special education and related services, and the current administration of the due process system.

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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During its meeting on September 25, 2008, the Board of Education adopted the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.), and directed the Department of Education to proceed with the requirements of the Administrative Process Act.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties...”

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2008-2009, Virginia expects to receive \$276.6 million in federal special education funding.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The revision of these regulations is essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia’s state special education regulations are aligned with federal requirements, VDOE will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

The revision process will also strive to ensure consistency by incorporating requirements of the *Code of Virginia* and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity from the previous set of regulations.

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately \$276.6 million in 2008-2009.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8 VAC 20-80) are being repealed and concurrently replaced with new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student's individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia's continued eligibility for federal special education funding. In 2008-2009, federal funding will provide approximately \$244.8 million in direct funding to local school divisions to support special education programs, and provide an additional \$31.8 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

There are no identifiable disadvantages to the general public, the agency, or the Commonwealth for revising these regulations.

## Changes made since the proposed stage

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

\* Denotes a substantive change.

Section number	Requirement at proposed stage	What has changed	Rationale for change
8 VAC 20-81 et seq.	* References regarding the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H).	Deleted all references to VSDB-H, and made necessary grammatical changes, resulting from the deletions.	The Board of Education officially closed VSDB-H on July 1, 2008.
	The term "mental retardation"	All references to "mental retardation" have been changed to "intellectual disability." This includes reordering certain provisions to appear alphabetically under "intellectual disability" rather than "mental retardation," such as in 8 VAC 20-81-10, and 8 VAC 20-80-80.	This revision was made in response to actions taken during the 2008 Session of the Virginia General Assembly, and significant public comment.
	The term "emotional disturbance"	All references to "emotional disturbance" have been changed to "emotional disability."	The revision was made in response to significant public comment.
	The term "LEA"	All references to "LEA" were changed to "local educational agency."	The revision was made for consistency.
	Citations, cross-references, and typographical errors	Throughout the document, as appropriate, citations and cross-references were corrected or added, and typographical errors were addressed.	The revisions were made to ensure clarity, correct typographical errors, and to comply with guidance from US DOE.
Foreword	4 <sup>th</sup> paragraph	Deleted "These references are found in the right margin."	Stylistic change.
	6 <sup>th</sup> paragraph	Corrected included telephone number.	Correct typographical error.
Preamble	Preamble	A new paragraph was added to the end of the preamble, expanding then language regarding the purpose of these regulations.	A public comment noted the need for additional language to provide an overview of the regulations and to clarify their purposes.

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8 VAC 20-81-10	* Definition of "Alternate assessment"	Added language: "means the state assessment program, <u>and any school division-wide assessment to the extent that the school division has one</u> , for measuring student performance against alternate achievement standards...."	The US DOE, during its review, noted that children with significant intellectual impairments must have available an alternative for measuring student performance against alternate achievement standards for not only the state assessment programs, but also, to the extent applicable, division-wide assessments.
	* Definition of "Autism"	"A child who manifests the characteristics of autism after age three could be <del>diagnosed</del> <u>identified</u> as having autism if the criteria in this definition are satisfied."	To comply with the federal regulatory requirement.
	* Definition of "Change in placement"	Inserted : "A 'change in placement' <u>also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.</u> "	In response to public comments, the change was added for clarity.
	* Definition of "Child with a disability"	Inserted: " <u>This also includes developmental delay if the LEA recognizes this category as a disability in accordance with 8 VAC 20-81-80 N.3.</u> "	In response to public comments, the change was added to clarify that a child who is identified as developmentally delayed is a child with a disability if the LEA permits "Developmental Delay" to be an eligibility category.
	* Definition of "Cognitive disability"	Deleted the term and the definition.	Given the change from "mental retardation" to "intellectual disability," this term, and its cross-reference to "mental retardation" is no longer necessary.
	* Definition of "Comprehensive Services Act" (CSA)	Revised definition to state that the CSA "establishes the collaborative administration and funding system <del>that addresses and funds for</del> <u>services for certain at-risk youths</u>	Revised to comply with the language and intent of the CSA.

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		and their families.”	
	* Definition of “Dangerous weapon”	Revised the language: “does not include a pocket knife with a blade of less than <del>2½</del> <u>3</u> inches in length.”	The revision is to comply with the <i>Code of Virginia</i> , which is more stringent than the standard of 2 ½ inches, which is included in federal law.
	* Definition of “Developmental Delay”	Revised the age of eligibility: “Developmental delay” means a disability affecting a child ages two by September 30 through [ <del>five</del> <u>six</u> ,] inclusive:....”	The revision was made in response to public comments.
	Definition of “Free appropriate public education” (FAPE)	Inserted language: FAPE means special education and related services that “Include <u>an appropriate preschool</u> , elementary school, middle school or secondary school education in Virginia”.	The revision was made to comply with federal regulatory language.
	Definition of “ Functional behavioral assessment” (FBA)	Inserted language that a FBA “may <del>be</del> <u>include</u> a review of existing data or new testing data or evaluation <u>as determined by the IEP team.</u> ”	In response to public comments, the change was added for clarity that an FBA could include the completion of a new evaluation.
	* Definition of “Impartial special education hearing officer”	Inserted a definition of the term, which “means a person, <u>selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.</u> ”	Included the term to distinguish the special education hearing officer from others included on the general list of hearing officers maintained by the Supreme Court of Virginia.
	* Definition of “Implementation plan”	Reinserted the term with a revised definition, noting the term “ <u>means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.</u> ”	In response to public comment, the role of implementation plans was reinserted to ensure that LEAs comply with hearing officers’ decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for

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			decisions of the hearing officer that simply dismisses a case or identify an agreement between the parties.
	* Definition of “Interpreting services”	Revised the definition to note that it includes “cued <u>speech/language transliteration services</u> ” and to indicate that “interpreting services” includes interpreting services for children who are deaf-blind. Also inserted: “ <u>A child who is not deaf or hard of hearing, but who has expressive or receptive language needs may receive sign language services if directed by the child’s IEP.</u> ”	In response to public comments, the changes were added for clarity, including which students are eligible to receive interpreting services.
	* N/A	Inserted new definition for “Long-term placement,” which states, “ <u>“Long-term placement’ if used in reference to state-operated programs as outlined in 8VAC 20-81-30 H. means those hospital placements which are not expected to change in status or condition because of the child’s medical needs.</u> ”	In response to public comments, changes were added to 8 VAC 20-81-30. For clarity, a new definition was also inserted.
	Definition of “National Instructional Materials Accessibility Standard”	Inserted language: “ <u>NIMAS’ means the standard established by the United States Secretary of Education to be used in the preparation of electronic files...</u> ”	Language to comply with federal regulatory requirements.
	Definitions: “Orthopedic impairment” “Other Health Impairment” “Traumatic Brain Injury”	Reinserted “ <u>that adversely affects a child’s educational performance</u> ” into the definitions for each of these terms.	The language, which appears as part of the federal definition for each of the terms, was included only in 20-81-80 of the proposed regulations as part of the identified eligibility criteria. Reinserted the language into the definition section upon guidance from the US DOE to ensure clarity.
	* Definition of “Parent”	Inserted: “Parent” may also mean “ <u>A minor who is emancipated under § 16.1-333 of the Code of Virginia.</u> ”	Based on guidance from the Office of the Attorney General, and to ensure clarity regarding the

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		<p>Inserted: <u>“A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor’s marriage record, and thus, assume responsibilities of ‘parent’ under this chapter.”</u></p>	<p>issue, if a child with a disability is emancipated in accordance with state law, or if the minor child with a disability is married, they should be permitted all rights and protections under IDEA, which are typically afforded to the parent of a child with a disability.</p>
	<p>* Definition of “Psychological services”</p>	<p>Inserted language to clarify that “psychological services” includes “consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, <u>direct observation</u>, and behavioral evaluations”.</p>	<p>Language added to comply with the federal definition of the term.</p>
	<p>* Definition of “Related services”</p>	<p>Inserted language to clarify that “related services” includes <u>“early identification and assessment of disabilities in children”</u>.</p>	<p>Language added to comply with the federal definition of the term.</p>
	<p>* Definition of “Social work services in Schools”</p>	<p>Inserted: <u>“A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.”</u></p>	<p>The definition in the proposed regulations mirrors the federal definition. In response to public comment, inserted language to clarify that in Virginia, school social workers may have a broader role.</p>
	<p>Definition of “Special education hearing officer”</p>	<p>The term has the same meaning as the term <u>“impartial hearing officer”</u> as that term is used in IDEA and its federal implementing regulations.</p>	<p>Added the word “impartial” to align with federal terminology.</p>
	<p>* Definition of “Specific Learning Disability”</p>	<p>Reinserted the term “emotional disabilities”: “Specific learning disability does not include learning problems that are primarily the result of ...of intellectual disabilities; <u>of emotional disabilities</u>; of environmental, cultural, or economic disadvantage.</p>	<p>The term was inadvertently deleted from the definition of “Specific Learning Disability” in the proposed regulations.</p>



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8 VAC 20-81-20	* Subsection 1. e. stated, "Are in special education and related services...."	"Are <del>in-receiving</del> special education and related services...."	As noted in public comments, special education and related services are services and not a location.
	Subsection 5 stated, "Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the local educational agency...."	Inserted language: "5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in <u>the areas served by</u> the local educational agency...."	Language inserted to comply with the federal regulatory requirements.
	* Subsection 7 stated, "Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met."	Replaced subsection 7 with new language: " <u>Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools.</u> "	Language revised to comply with federal regulatory requirements.
	* Subsection 11 outlines VDOE's responsibilities to ensure LEAs comply with state and federal laws and regulations regarding special education.	Revised 11 a to state, "a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, <del>processing requests for a hearing, appointment of evaluating</del> special education hearing officers, <u>and</u> management and monitoring of hearings, <del>and administration of the hearing system.</del> "	In response to public comments, the Supreme Court of Virginia will continue to administer the due process hearing system.
	* Subsection 23 outlines VDOE's responsibilities relative to collecting Child Count data.	Revised language: "Report and certify annually to the United States Department of Education the number of children with disabilities...on <u>any a</u> date between October 1 and December 1 of each year <u>determined by the</u>	Based upon guidance from US DOE, revised the language to require that Child Count data be collected on a specific date each year. The Superintendent of Public

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		<u>Superintendent of Public Instruction or designee.</u> "	Instruction or designee will determine the date, but it will be between October 1 and December 1 each year.
	* Subsections 24 and 25 outline VDOE's responsibilities regarding overidentification and disproportionality.	<p>Language was inserted into 24 a and 25:</p> <p>"24. Ensure that a practical method is developed and implemented... with respect to:</p> <p style="padding-left: 20px;">a. The identification of children as children with disabilities, including the identification of <u>children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability"; ...</u></p> <p>25. Ensure that in the <u>case of the determination of significant disproportionality, as outlined in subdivision 24 of this section</u>, the Virginia Department of Education shall:</p> <p style="padding-left: 20px;">a. <del>Reviews</del> <u>review</u> and, if appropriate, <del>revises</del> <u>provide for the revision of</u> the policies, procedures, and practices used by the local educational agency...</p> <p style="padding-left: 20px;">b. <del>Requires</del> <u>require</u>...</p> <p style="padding-left: 20px;">c. <del>Requires</del> <u>require</u>...</p>	Based on guidance from US DOE, the language was modified to more closely align with federal regulatory requirements.
	Subsection 28 outlines VDOE's responsibilities regarding if it provides direct services to children with disabilities.	Revised 28 a: "The Virginia Department of Education <del>shall</del> <u>may</u> use payments that would otherwise have been available to a local educational agency <u>under Part B of the Act</u> to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of <del>§ 4413 (h) of the Act</del> <u>the excess cost requirements as outlined in 8 VAC 20-81-260.</u>	This revision is made to align with federal regulatory requirements. Inadvertently, the correction was not included in the proposed regulations.
8 VAC 20-81-30	B 2: "Children with disabilities who are	Revised B 2: "Children with disabilities who are homeless, <u>in</u>	Based on public comment, additional

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	homeless;”	<u>accordance with the provisions of the McKinney-Vento Homeless Assistance Act (42 USC §11431 et seq.);</u>	language was inserted to clarify that LEAs must also comply with the requirements of the McKinney-Vento Homeless Assistance Act when working with students with disabilities who are homeless.
* N/A		Inserted a new provision in subsection C: “Every child with a disability is deemed to reside in a school division when:… <u>7. The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor’s marriage record.</u>	Based on guidance from the Office of the Attorney General, language was inserted to clarify which LEA is responsible for the provision of FAPE to a child with a disability who has been emancipated in accordance with the <i>Code of Virginia</i> .
* In subdivisions E 3 through E 8, the proposed regulations outlined which LEA was responsible for the provision of FAPE to a child with a disability based on the child’s residency. Each provision included an exception that if the child was placed in a state-operated program (SOP), the SOP was responsible for the provision of FAPE rather than the LEA of residence.		In subdivisions E 3 through E 8, deleted the phrases: “unless the child is in a state-operated program”; “unless the adult child with a disability is in a state-operated program”; and “unless the adult child is in a state operated program”.	In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, the child’s LEA of residence continues to be responsible for the provision of FAPE in the least restrictive environment.
* Subdivision E 7: “7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The		Revised subdivision E 7: “7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, <del>the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program.</del> <u>The the</u> adult child’s residence is the fixed home to which the adult child will return following the child’s return	As noted above, in response to public comments, the phrase “unless the adult child is in a state-operated program” was deleted.  The additional revision was made to comply with the <i>Code of Virginia</i> and to mirror the current provision.

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	adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."	from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."	
	* N/A	Inserted a new provision in subsection E: <u>"9. If placed in a sponsored residential home, licensed in accordance with 12VAC 35-105-10 et seq., the child is a resident of the division where the parent(s) reside."</u>	The new provision was added to clarify which LEA is responsible for FAPE given this non-educational placement option is expanding in Virginia.
	* "H. Each state-operated program shall ensure that children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education."	Revised the language in subsection H: "Each state-operated program shall ensure that <u>the requirements in this chapter are applied to</u> children with disabilities, aged two to 21, inclusive, in that institution <del>have the right to a free appropriate public education.</del> 1. <u>For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.</u> 2. <u>The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.</u>	In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, but who can be served in the LRE in the LEA of residence, the child's LEA of residence continues to be responsible for the provision of FAPE. The revision also outlines the SOPs responsibilities for these students.
8 VAC 20-81-40	* Subdivision A 2 stated, "b. Special education teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified."	Deleted language: "b. Special education teachers who are the teachers of record for <del>instructing one or more federal core subjects to students with disabilities</del> shall be highly qualified."	Based on guidance from US DOE, special education teachers must be highly qualified regardless of whether or not the teacher is providing instruction in one or more of the federal core subjects.

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	<p>* Subsection E outlined the requirements for Educational interpreting services.</p>	<p>The subsection was revised as follows:</p> <p>E. Educational interpreting services.</p> <p>1. The qualification requirements for personnel providing interpreting services <u>for children who are deaf or hard of hearing</u> are as follows:</p> <p>a. Personnel providing educational interpreting services for children using sign language shall:</p> <p>(1) have a <u>valid...</u>(VQAS) Level III, or</p> <p>(2) a passing score on the... (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state <u>qualification</u> or national certification (<del>National Interpreter Certification</del><u>excluding Certificate of Deaf Interpretation</u>) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. <del>Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.</del></p> <p>b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/language or hold a <u>national</u> Transliteration Skills Certificate from the...(TEC Unit) or equivalent recognized by the <u>Virginia Department for the Deaf and Hard of Hearing</u>.</p> <p>c. Personnel providing</p>	<p>In response to public comment, revisions were made to the qualifications of educational interpreters to provide LEAs and educational interpreters with flexibility, while ensuring that children with disabilities are provided with quality interpreting services.</p>

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		<p>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 and hold a national Oral Interpreter Credential (OIC).</p> <p>2. Personnel who provide interpreting services for children who use sign language or cued speech/ language and who do not hold the required qualifications may be employed in accordance with the following criteria:</p> <p>a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or</p> <p>b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.</p> <p>3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:</p> <p>a. Personnel providing educational interpreting services for children using sign language shall hold</p> <p>(1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or</p> <p>(2) a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation)</p>	

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		<p><u>recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.</u></p> <p><u>(3)Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.</u></p> <p><u>(4)Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.</u></p> <p><u>b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</u></p> <p><u>(1)Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.</u></p> <p><u>(2)Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.</u></p> <p><u>c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of</u></p>	

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		<p><u>Deaf and Hard of Hearing.</u></p> <p><u>4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.</u></p>	
8 VAC 20-81-50	<p>* Subdivision A 3 f: “f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, on how to implement the child find and evaluation activities.”</p>	<p>Revised subdivision A 3 f: “f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, <u>and representatives of parents of parentally-placed private school children with disabilities</u>, on how to implement the child find and evaluation activities.”</p>	Upon guidance from US DOE, revisions made to comply with federal regulatory requirements.
	<p>* D. Each school division shall have procedures to review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals.</p> <p>1. The local school division’s procedures shall ensure that if a child received early intervening services and/or other scientific research-based interventions, these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such</p>	<p><u>D. Referrals.</u></p> <p>1. Each school shall have procedures to <u>process in a timely manner all referral requests for a child suspected of having a disability.</u></p> <p>2. Each school shall have a team <u>to review records and other performance evidence of the child being referred in order to make recommendations to meet the child’s educational and behavioral needs.</u></p> <p><u>a. The team shall include:</u></p> <p><u>(1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);</u></p> <p><u>(2) The principal or designee;</u></p> <p><u>(3) At least one teacher; and</u></p> <p><u>(4) At least one specialist.</u></p>	<p>In response to public comment, a framework for a school-based structure for referrals was reinserted, including timelines, required team members, and procedures for the referral process. However, the revisions continue to permit LEAs the flexibility to use scientific, response to intervention methods with procedural protections for the child suspected of having a disability intact.</p>



Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>procedures shall include:</p> <ul style="list-style-type: none"> <li>a. tracking and reviewing timelines;</li> <li>b. instructions on maintaining data-based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and</li> <li>c. written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or development.</li> </ul> <p>2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high-quality, research-based instruction in general education settings delivered by qualified personnel and data-based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.</p> <p>E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability.</p> <p>1. The local school division's procedures shall ensure that the processing of such referrals do not</p>	<p><u>b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.</u></p> <p><u>c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.</u></p> <p><u>3. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.</u></p> <ul style="list-style-type: none"> <li><u>a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.</u></li> <li><u>b. If the referral is made to the special education administrator or designee, the administrator shall within 3 business days:</u> <ul style="list-style-type: none"> <li><u>(1) initiate the evaluation-eligibility process in accordance with 8VAC20-81-60; -70; -80;</u></li> <li><u>(2) require that the school-based team review and respond to the request; or</u></li> <li><u>(3) deny the request.</u> <ul style="list-style-type: none"> <li><u>(a) If the request is denied, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</u></li> </ul> </li> </ul> </li> </ul> <p><u>4. In reviewing the child's performance, the team may use a</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</p> <p>2. If the school division decides not to evaluate, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</p>	<p><u>process based on the child's response to scientific, research-based interventions or other alternative research-based procedures.</u></p> <p><u>a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</u></p> <p><u>b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services.</u></p> <p><u>5. Timelines for Referral Process</u></p> <p><u>a. The team shall meet within 10 business days following the receipt of the referral.</u></p> <p><u>b. The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.</u></p> <p><u>c. If the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing.</u></p> <p><u>6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.</u></p>	
8 VAC 20-81-60	<p>* Subsection A: 1. Referrals may be made by any source including</p>	<p>Revised subsection A: 1. Referrals may be made by any source including school staff, a</p>	<p>In response to public comment, a framework for a school-based</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals.</p> <p>Subsection B: 1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the special education administrator, or designee, shall:</p>	<p>parent(s), the Virginia Department of Education, any other state agency, or other individuals, <u>or a school-based team in accordance with 8VAC20-81-50 5.b.</u> ...</p> <p>Insert new subdivision A 3: <u>3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected of having a disability, from a source other than the school-based team, the special education administrator, or designee, shall:</u></p> <p><u>a. initiate the initial evaluation procedures under subsection B;</u></p> <p><u>b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.;or</u></p> <p><u>c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170.</u></p> <p>Subsection B: <del>1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the</del> <u>The</u> special education administrator, or designee, shall:</p>	<p>structure for referrals was reinserted into 8 VAC 20-81-50. Language was changed in this section as a result of changes to 8 VAC 20-81-50.</p>
	<p>* Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the evaluation process.”</p>	<p>Revised Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days <del>after the parent has provided written consent to the</del> <u>evaluation process of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action.</u>”</p>	<p>In response to significant public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee. In addition, for clarity, a timeline was inserted for the routing of a referral to the school-based team, outlined in 8 VAC 20-81-50.</p>
8 VAC 20-81-70	The term “test”.	The term “test” was replaced with the term “assessment” throughout	Revised to comply with federal regulatory

Section number	Requirement at proposed stage	What has changed	Rationale for change
		the section.	language.
	* N/A	Inserted new provision B 1 b (4): "b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine: <u>...(4) Whether the child needs or continues to need special education and related services;...."</u>	Revised to comply with federal regulatory language.
	Subdivision F 5: "5. Requirements if additional data are not needed: a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding: (1) the determination and the reasons for it; and (2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes. c. The child's parent(s) has the right to resolve the issue through the dispute resolution options	Deleted language as subdivision F 5, and inserted the same language as a new subdivision B 4.	The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	of mediation or due process, as described in this chapter.		
	<p>* Subsection C:</p> <p>1. Tests and other evaluation materials used to assess a child under this chapter are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>2. Each assessment and other evaluation materials shall be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.</p> <p>...</p> <p>6. Any standardized tests that are given to a child:</p> <p>a. Have been validated for the specific purpose for which they are used; and</p> <p>b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.</p>	<p>Revised subsection C:</p> <p>1. <del>Tests</del> <u>Assessments</u> and other evaluation materials used to assess a child under this chapter are:</p> <p>a. selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>b. <del>Each assessment and other evaluation materials shall be</del> provided and administered in the <u>child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;</u></p> <p>c. <u>are used for the purposes for which the assessments or measures are valid and reliable; and</u></p> <p>d. <u>are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.</u></p>	<p>Based on guidance from US DOE, the language in subsection C was revised to comply with federal regulatory requirements.</p>
	<p>* Subsection D: "A written copy of the evaluation report shall be provided at no cost to the parent(s). The report shall be available to the parent(s) no later than two business days before the meeting to determine eligibility."</p>	<p><del>"D. A written copy of the evaluation report shall be provided at no cost to the parent(s). The report</del> <u>evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility.</u></p> <p><u>1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation</u></p>	<p>In response to public comment, revisions were made to clarify each LEA's responsibilities relative to the provision of evaluation reports.</p>

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		<p><u>report(s) or immediately following the meeting, but no later than 10 days after the meeting.</u></p> <p><u>2. The evaluation report(s) shall be provided to the parent(s) at no cost.</u></p>	
	<p>Subdivisions F 3, F 4, and F 6:</p> <p>“3. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B. of this section, in determining:</p> <ul style="list-style-type: none"> <li>a. whether the child continues to have a disability;</li> <li>b. the child’s educational needs, including the present levels of academic achievement and related developmental needs of the child;</li> <li>c. whether the child continues to need special education and related services;</li> <li>d. whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child’s IEP and to participate, as appropriate, in the general education curriculum.</li> </ul> <p>4. The local educational agency shall administer tests and other evaluation materials, in accordance</p>	<p>Replaced previous subdivision F 3 with the following:</p> <p><u>“The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section.”</u></p> <p>Deleted subdivisions F 4 and F 6.</p>	<p>The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>with subsection B of this section, as may be needed to produce the data identified in subdivision 3. of this subsection.</p> <p>...</p> <p>6. This process is considered the evaluation if no additional data are needed.</p>		
	<p>* Subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to the evaluation."</p>	<p>Revised subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days <del>from the date of the parent's consent to</del> <u>of the receipt of the referral by the special education administrator or designee for the evaluation.</u>"</p>	<p>In response to strong public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee.</p>
8 VAC 20-81-80	<p>Subsection C: "...If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."</p> <p>* Subdivision D 3 through D 5:</p> <p>"3. Observation. a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting, to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a</p>	<p>Revised subsection C: "...If a determination is made that a child has a disability and <del>needs</del> <u>requires</u> special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."</p> <p>Revised subdivision D 3 through D 5:</p> <p>"3. Observation. <del>a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</del> ba. The local educational agency</p>	<p>This section was substantially revised</p> <ul style="list-style-type: none"> <li>• To comply with federal regulatory requirements;</li> <li>• To comply with public comment; and</li> <li>• To provide clarification.</li> </ul> <p>In addition, references to the DSM were deleted, and language, which previously implied that school personnel could "diagnose" children with disabilities, was removed.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>group member shall observe the child in an environment appropriate for a child of that age.</p> <p>b. The local educational agency shall:</p> <p>(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</p> <p>(2) Ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</p> <p>(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.</p> <p>4. A child shall not be determined to be eligible...if the child does not otherwise meet the eligibility criteria, and the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading...</p> <p>b. lack of appropriate instruction in math; or</p> <p>c. limited English proficiency.</p>	<p>shall:</p> <p><del>(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</del></p> <p><del>(2) Ensure ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</del></p> <p><del>(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.</del></p> <p>b. The eligibility group, in determining whether a child is a child with a disability shall:</p> <p><u>(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or</u></p> <p><u>(2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.</u></p> <p><u>c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</u></p> <p>4. A child shall not be determined to be eligible...if the child does not</p>	



Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>5. The documentation of the determination of eligibility shall include a statement of:...</p> <p>e. The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child's age....</p> <p>f. For identification of learning disabilities, whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement or both relative to intellectual development in one or more of the areas listed in subsection K. of this section.”</p>	<p>otherwise meet the eligibility criteria, <del>and</del> <u>or</u> the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading...</p> <p>b. lack of appropriate instruction in math; or</p> <p>c. limited English proficiency.</p> <p>5. <u>The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. The documentation of the determination of eligibility This documentation shall include a statement of:...</u></p> <p>e. The instructional strategies used and the student-centered data collected if <u>the child has participated in a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child's age. ...</u></p> <p>f. For identification of <u>a child with a specific learning disabilities disability, whether consistent with the requirements of subdivision T.2.a. and T.2.b. of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and</u>  <u>(1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or]</u>  <u>[(2) the child exhibits a pattern of there are strengths and weaknesses in performance, or achievement, or both, or there are strengths and weaknesses in performance or achievement or both relative to age, Virginia-approved grade-level standards or]</u> intellectual development <del>in</del> <u>one or more of the areas listed in subsection K of this section.</u></p> <p>g. <u>For identification of a child with a specific learning disability, the group's determination is</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subsections H and I:            “H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child’s disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child’s access to the general educational activities for this age group.</p> <p>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability.”</p>	<p><u>consistent with the requirements of subdivision T.2.c. of this section.”</u></p> <p>Revised subsections H and I:            “H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child’s disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child’s access to the general educational activities for this age group.</p> <p><u>H. For all children suspected of having a disability, local educational agencies shall:</u></p> <ol style="list-style-type: none"> <li><u>1. use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and</u></li> <li><u>2. have documented evidence that by reason of the disability, the child needs special education and related services.</u></li> </ol> <p><del>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability.</del></p>	
	<p>* Subsections L through S:             Outlined eligibility criteria</p>	<p>Revised subsections J through W:             Substantially redrafted eligibility criteria for each of the previously</p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>for each of the following eligibility categories:</p> <ul style="list-style-type: none"> <li>• Autism</li> <li>• Deafness</li> <li>• Developmental Delay</li> <li>• Hearing Impairment</li> <li>• Intellectual Disability</li> <li>• Other Health Impairment</li> <li>• Specific Learning Disability</li> <li>• Speech-Language Impairment</li> <li>• Visual Impairment</li> </ul>	<p>drafted categories, and inserted new criteria for each of the following:</p> <ul style="list-style-type: none"> <li>• Deaf-Blindness</li> <li>• Emotional Disability</li> <li>• Multiple Disabilities</li> <li>• Orthopedic Impairment</li> <li>• Traumatic Brain Injury</li> </ul>	
8 VAC 20-81-90	<p>* A. A local educational agency shall evaluate a child with a disability in accordance with 8 VAC 20-81-70 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.</p> <p>B. The IEP Team shall terminate the child's eligibility for special education and related services in the following areas:</p> <ol style="list-style-type: none"> <li>1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services.</li> <li>2. A related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and</li> </ol>	<p><u>A. Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.</u></p> <ol style="list-style-type: none"> <li>1. <u>Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.</u></li> <li>2. <del>A</del> <u>The</u> local educational agency shall evaluate a child with a disability...</li> <li>3. Evaluation is not required...</li> </ol> <p>B. The IEP team shall terminate the child's eligibility for <del>special education and related services in the following areas:</del></p> <ol style="list-style-type: none"> <li>1. <del>Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services.</del></li> <li>2. <del>A</del> <u>a</u> related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services.</li> </ol> <ol style="list-style-type: none"> <li>1. The IEP team <del>making the</del> <u>shall make this determination shall include local educational agency personnel representing the specific related services discipline</u></li> </ol>	<p>In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted, including parental consent for the partial or complete termination of special education and related services.</p>

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	<p>related services. The IEP team making the determination shall include local educational agency personnel representing the specific related services discipline being terminated.</p> <p>3. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8 VAC 20-81-170 C., but parental consent is not required.</p> <p>C. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility....</p>	<p><del>being terminated based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.</del></p> <p><u>C. Written parental consent shall be required prior to any partial or complete termination of services.</u></p> <p><u>D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C., but parental consent is not required.</u></p> <p><u>E. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the eligibility procedures in 8VAC20-81-80 to terminate the child's eligibility...</u></p>	
8 VAC 20-81-100	<p>Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the age of eligibility requirements in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency."</p> <p>N/A</p> <p>* Subdivision I 4: "4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education</p>	<p>Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the <u>definition of "age of eligibility" requirements as outlined in 8 VAC 20-81-10</u> and who reside within the jurisdiction of each local educational agency."</p> <p>Inserted into Subsection H a cross-reference to 8 VAC 20-81-130 A 2.</p> <p>Revised subdivision I 4: "4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education services in compliance with <del>subdivision 3.</del> of this</p>	<p>Revisions made in response to public comment and to clarify that the change is not related to the definition of "Developmental Delay." Rather, the change is intended to prevent restating information in the definition of "Age of Eligibility."</p> <p>Revisions made in response to public comment.</p> <p>Revision made to comply with the federal regulatory requirement.</p>

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	services in compliance with subdivision 3. of this subsection.”	subsection.”	
	* Subsection L outlines requirements regarding “Length of School Day”.	At the end of Subsection L, inserted new sentence which states, “For preschool-aged children with disabilities, the IEP team determines the length of the school day.”	This long-standing VDOE interpretation was inserted for clarity.
	Subdivision M 1: VDOE “may use whatever state, local, federal, and private sources of support are available....”	Revised subdivision M 1: VDOE “may use whatever state, local, federal, and private sources of support <u>that</u> are available....”	Word inserted to mirror federal regulatory language.
8 VAC 20-81-110	* Subdivision B 2 d required that each LEA ensure that an IEP “d. Is implemented as soon as possible following parental consent to the IEP not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.”	Revised subdivision B 2 d: “d. Is implemented as soon as possible following parental consent to the IEP, <del>not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.</del>	The revision was made in response to public comment. The revised provision mirrors Virginia’s current regulatory requirement.
	* Subdivision B 7: “This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives....”	Deleted the subdivision.	Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.
	* Subdivision B 8 a: “If the local educational agency considers the parent’s request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent’s request and provide the parent information on this chapter’s dispute	Deleted the subdivision.	Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.

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	resolution options.”		
	* Subdivision C 4 regarding Part C transition participants: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s) request, invite the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.”	Revised subdivision C 4: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s) request, invite the Part C service coordinator or other representatives of the Part C system <u>to the initial IEP meeting</u> to assist with the smooth transition of services.”	Revisions made to clarify federal regulatory requirements.
	Subdivision E 2: a (3) “Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.”  b (1) “For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system.”	Revised subdivision E 2: a (3) “Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child <u>under subdivision C.1.f. of this section.</u> ”  b (1) “For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system <u>under subdivision C.4. of this section.</u> ”	Cross-references inserted for clarification.
	* Subdivision E 4 b: “4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence sent to the parent(s) and any responses received; or	Revised subdivision E 4 b: “4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence <u>(written, electronic, or facsimile)</u> sent to the parent(s) and any responses received; or	In response to public comment, language inserted for clarification.
	Subdivision E 6 outlined provisions regarding audio and video recordings of IEP meetings.	Entire subdivision deleted from this section and reinserted at to 8 VAC 20-81-170 J.	In response to public comments, expanded the provision to apply to eligibility meetings and manifestation determination review meetings, as well as IEP

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			meetings. As revised, the provisions were more properly placed in the Procedural Safeguards section.
	* Subdivision E 7: "7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting."	Subdivision E 7: "7. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, <u>or within a reasonable period of time after the IEP meeting, not to exceed but no later than 10</u> calendar days <del>from the date of the IEP meeting.</del>	Revisions made in response to public comments.
	* N/A	Inserted new subdivision in F 2: 2. The IEP team also shall: ...  d. Consider the communication needs of the child;  e. <u>Consider the child's need for benchmarks or short-term objectives;</u>  <del>e-f.</del> In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, ...; and  <del>f-g.</del> Consider whether the child requires assistive technology devices and services.	Revised these sections in response to public comments to emphasize that during the development of each child's IEP, regardless of whether or not the child is participating in Virginia Alternate Assessment Program, the IEP team must consider whether or not the child requires benchmarks or short-term objectives in order to receive FAPE. The IEP team's consideration must also be documented.
	* Subdivision G 3 regarding the content of an IEP: "3. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives. a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.	Subdivision G 3: "3. <u>If determined appropriate by the IEP team as outlined in F 2 of this section, a description of benchmarks or short-term objectives.</u> For children with disabilities who take alternate assessments aligned to alternate achievement standards, <u>the IEP shall include a description of benchmarks or short-term objectives.</u> <del>a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.</del> <u>a. The IEP team shall document its consideration of the inclusion</u>	

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		<u>in the child's IEP of benchmarks or short-term objectives.</u>	
	<p>* Subdivision G 4 regarding the content of an IEP:            "4. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the child."</p>	<p>Revised subdivision G 4 regarding the content of an IEP:            "4. A statement of the special education and related services and supplementary aids and services, <u>based on peer-reviewed research to the extent practicable,</u> to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to <u>enable</u> the child:"</p>	<p>Language was inadvertently omitted from the proposed regulations, and reinserted to comply with federal regulatory provisions.</p>
	<p>* Subdivision G 6 regarding the content of an IEP:            "a. A statement of any individual accommodations or modifications that are necessary...            b. If the IEP team determines that the child will not participate in a particular state assessment of student achievement (or part of an assessment), a statement of:            (1) Why that assessment is not appropriate for the child;            (2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and            (3) How the child's nonparticipation in the assessment will impact the child's....            c. A statement that the child shall participate in</p>	<p>Revised subdivision G 6:            "a. A statement of any individual <u>appropriate accommodations or modifications that are necessary...</u>            b. If the IEP team determines that the child <del>will not participate in</del> <u>must take an alternate assessment instead of</u> a particular state assessment of student achievement (or part of an assessment), a statement of:            (1) Why <del>that assessment is not appropriate for the child</del> <u>the child cannot participate in the regular assessment;</u>            (2) <del>How the child will be assessed, including participation in the alternate assessment for those students who meet</del> <u>Why the particular assessment selected is appropriate for the child, including that the child meets</u> the criteria for the alternate assessment; and            (3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.            c. A statement that the child shall</p>	<p>Word inserted into subdivision G 6 a to comply with federal regulatory requirements.            Revisions to G 6 b through G 6 e were made to comply with federal regulatory requirements.</p>



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	<p>either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;</p> <p>d. A statement of any individual accommodations or modifications...;</p> <p>e. If the IEP team determines that the child will not participate in a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child;</p> <p>(2) How the child will be assessed;</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p>	<p>participate in either <del>the a</del> state assessment for all children that is part of the state assessment program or the state's alternate assessment;</p> <p>d. A statement of any individual <u>appropriate</u> accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;</p> <p>e. If the IEP team determines that the child <del>will not participate in</del> <u>must take an alternate assessment instead of</u> a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why <del>that assessment is not appropriate for the child</del> <u>the child cannot participate in the regular assessment</u>;</p> <p>(2) <del>How the child will be assessed</del> <u>Why the particular alternate assessment selected is appropriate for the child</u>; and</p> <p>(3) How the child's nonparticipation in the assessment will impact the child's ....</p>	
	<p>* Subdivision G 7: 7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.</p>	<p>Deleted the last sentence in subdivision G 7: "7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. <del>Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.</del>"</p>	<p>Sentence deleted to comply with applicable case law.</p>
	<p>* Subdivision G 8 b: "b. When periodic reports on the progress the child is making toward meeting</p>	<p>Revised subdivision G 8 b: "b. When periodic reports on the progress the child is making toward meeting the <u>annual</u> goals</p>	<p>As a result of significant public comment, language was inserted for clarity. The new</p>

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	the goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.”	will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, <u>and at least as often as parents are informed of the progress of their children without disabilities.”</u>	language reflects the current Virginia regulatory requirement.
	<p>* Subdivision G 10:  “10. Secondary transition services.  a. Prior to the child entering secondary school but beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, the IEP shall include:  (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;  (2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and  (3) A statement, if appropriate, of interagency responsibilities or any needed linkages.  b. For a child pursuing a modified standard diploma, the IEP team shall consider the child’s need for occupational readiness upon school completion, including consideration of courses</p>	<p>Revised subdivision G 10:  “10. Secondary transition services.  a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually <u>thereafter</u>, the IEP shall include <u>age-appropriate</u>:  (1) <del>Appropriate</del> measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; <u>and</u>  (2) <del>The</del> transition services, including courses of study <del>(such as participation in advanced-placement course or career and technical education program)</del>, needed to assist the child in reaching those goals. <u>Transition services shall be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.</u>  <u>b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements in subdivision 10.a. of this subsection, the IEP shall also include (3) A a</u> statement, if appropriate, of interagency responsibilities or any linkages.  <u>bc.</u> For a child pursuing a modified standard diploma, the IEP team shall consider the child’s need for occupational readiness upon</p>	<p>In response to public comment, secondary transition services will begin at age 14, rather than age 16. However, the language was revised to clarify the difference regarding the LEA’s responsibilities for providing transition services to a child with a disability at age 14 versus age 16.</p>

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	<p>to prepare the child as a career and technical education program completer.</p> <p>c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."</p>	<p>school completion, including consideration of courses to prepare the child as a career and technical education program completer.</p> <p><del>e. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."</del></p>	
	<p>* Subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority."</p>	<p>Revised subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student <u>and parent(s) has have</u> been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority."</p>	<p>Revised in response to public comment.</p>
<p>8 VAC 20-81-120</p>	<p>* Subdivisions A 2 through A 4:</p> <p>"2. The new local educational agency shall provide a free appropriate public education to the child, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:</p> <p>a. adopts the child's IEP from the previous local educational agency; or</p> <p>b. conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this chapter.</p> <p>3. The local educational agency may develop and implement an interim IEP</p>	<p>Revised subdivisions A 2 through A 4:</p> <p>"2. The new local educational agency shall provide a free appropriate public education to the child, <u>including ensuring that the child has available special education and related services</u>, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:</p> <p>a. Adopts <u>and implements</u> the child's IEP from the previous local educational agency <u>with the parent's consent</u>; or</p> <p>b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP <u>with the parent's consent</u> that meets the requirements in this chapter.</p> <p>3. The <u>new</u> local educational agency may develop and</p>	<p>In response to public comment, reinserted all Virginia-specific parental consent requirements, including those relative to children with disabilities who transfer.</p>

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	<p>while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.</p> <p>a. The parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute."</p>	<p>implement an interim IEP <u>with the parent's consent</u> while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. <u>If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, if the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency. The</u> the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. <u>During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency."</u></p>	
	<p>* Subsection C:  "C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter. During the evaluation period, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency."</p>	<p>Revised subsection C:  C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.</p> <p><u>1. During the evaluation period, child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.</u></p> <p><u>2. The</u> <del>the</del> <u>The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter. provide FAPE in consultation with the parent(s),</u></p>	

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		<p><del>including services comparable to those described in the child's IEP from the previous local educational agency.</del></p>	
8 VAC 20-80-130	<p>Subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities....”</p> <p>Subdivision B 1: “1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.”</p>	<p>Revised subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, <u>aged two to 21, inclusive</u>, including those in public or private institutions or other care facilities, are educated with children without disabilities....”</p> <p>Subdivision B 1: “1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, <u>aged two to 21, inclusive</u>, for special education and related services.”</p>	<p>Revisions were made in response to public comment to:</p> <ul style="list-style-type: none"> <li>clarify that the provisions regarding LRE apply to preschool students;</li> <li>link the requirements regarding the provision of supplementary aids and services in nonacademic settings, which appears in the FAPE section, to similar requirements which appear in this section; and</li> <li>reinsert the continuum of alternative placements. This language had been moved to the definition of “special education,” but was reinserted for clarity.</li> </ul>
	N/A	Inserted cross-reference to 8 VAC 20-81-100 H. in 8 VAC 20-81-130 A 2.	
	<p>Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10....”</p>	<p>Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, <u>including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions....</u>”</p>	
8 VAC 20-80-150	<p>Subdivision C 1: 1. Definitions applicable to this subsection.</p>	<p>Revised subdivision C 1: 1. <del>Definitions applicable to this subsection</del> <u>The following definitions are applicable for purposes of this subsection.</u></p>	<p>Revisions were made to clarify that these definitions apply for purposes of these regulations only.</p>
	<p>* Subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools on how to</p>	<p>Revised subdivision C 2 b: “Each local school division shall consult with appropriate representatives of the private schools <u>and representatives of parents of parentally-placed</u></p>	<p>In response to guidance from US DOE, revisions were made to ensure compliance with federal regulatory requirements.</p>

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	carry out the child find activities....”	<u>private schools children with disabilities</u> on how to carry out the child find activities....”	
	* Subdivision C 4 c: “c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year....”	Revised subdivision C 4 c: “c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted <u>by December 1 of each year on a date between October 1 and December 1 of each year, as determined by the Superintendent of Public Instruction or designee....”</u>	
	* Subdivision C 5 a (5): (5) How and when those decisions will be made.	Revised subdivision C 5 a (5): (5) How and when those decisions will be made, <u>including how parents, teachers and private school officials will be informed of the process.</u>	
8 VAC 20-80-160	* Subsection A: “General. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency’s disciplinary policies and procedures. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.”	Divided proposed subsection A into subdivisions A 1 and A 3; and inserted new provisions A 2, A 3 a, and A 3 b: <u>“2. In the event that the child’s behavior impedes the child’s learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:</u>  <u>a. developing goals and services specific to the child’s behavioral needs, or</u>  <u>b. conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child’s behavioral needs.”</u>  3. School personnel may consider any unique circumstances....  <u>a. In reviewing the disciplinary incident, school personnel may</u>	In response to public comments, inserted additional language regarding functional behavioral assessments (FBAs) and behavioral intervention plans (BIP) for clarity and to assist school administrators in making decisions regarding disciplinary incidents based on the child’s unique circumstances.  Inserted additional language to assist parents and school administrators in understanding procedural protections for parents who disagree with an evaluation obtained by the LEA as part of the FBA process.

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		<p><u>review the child's IEP and any behavioral intervention plan, and/or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.</u></p> <p><u>b. School personnel may convene an IEP team for this purpose.</u></p>	
	* N/A	<p>Inserted new subdivisions in D 6 a:</p> <p><u>"(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.</u></p> <p><u>(2) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B. if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or"</u></p>	
	<p>* Subdivision C 5 regarding "Special Circumstances":</p> <p>"a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled</p>	<p>Revised subdivision C 5:</p> <p>"a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school, <u>on school premises, or at a school function</u> under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, <u>on school premises, or at a school function</u> under the jurisdiction of a local educational agency or the Virginia</p>	<p>Based upon guidance from US DOE, revised the language to comply with federal regulatory requirements.</p>

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	<p>substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education;</p> <p>or</p> <p>b. The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>c. For purposes of this part, ‘weapon,’ ‘controlled substance,’ and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</p>	<p>Department of Education; or</p> <p>b(3). The child inflicts seriously bodily injury upon another person at school, <u>on school premises</u>, or <u>at a school function</u> under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>eb. For purposes of this part, ‘weapon,’ ‘controlled substance; and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</p>	
	<p>* Subdivision F 1: “A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child’s behavior is likely to result in injury to self or others.”</p>	<p>Revised subdivision F 1: “A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child’s behavior is <u>substantially</u> likely to result in injury to self or others.”</p>	<p>The word was inadvertently omitted from the proposed regulations, and was inserted based on public comments, and to comply with federal regulatory requirements.</p>
<p>8 VAC 20-81-170</p>	<p>Subdivision B 3 a indicated that parent-initiate evaluations “Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and”</p>	<p>Revised subdivision B 3 a: “Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding <u>the provision of a free appropriate public education for to the child</u>; and”</p>	<p>Language was revised for clarity.</p>
	<p>Subdivision D 1 e: “e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement.</p>	<p>Revised subdivision D 1 e: “e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement <u>because of a violation of a code of student conduct.</u></p>	<p>Language inserted for clarity.</p>



Section number	Requirement at proposed stage	What has changed	Rationale for change
	* Subsection E regarding parental consent.	Reinserted Virginia-specific requirements that parental consent must be obtained before any partial or complete termination of special education and related services, and prior to the provision of a free appropriate public education to children with disabilities who transfer.	In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.
	* Subdivision E 2 d indicated parental consent is not required before the “Administration of a test or other evaluation that is used to measure progress on the child’s IEP goals;”	Revised subdivision E 2 d: Administration of a test or other evaluation that is used to measure progress on the child’s IEP goals <u>and is included in the child’s IEP;</u> ”	Inserted language was inadvertently omitted from the proposed regulations and was reinserted for clarity.
	* Subdivision E 8 b: “8. To meet the reasonable measures requirement of this section, ...  b. Copies of correspondence sent to the parent(s) and any responses received; and”	Revised subdivision E 8 b: “8. To meet the reasonable measures requirement of this section, ...  b. Copies of correspondence <u>(written, electronic, or facsimile)</u> sent to the parent(s) and any responses received; and	In response to public comment, language inserted for clarity.
	* Subdivision G 1 c: “A local educational agency may presume that a parent has authority to inspect and review records relating to the parent’s children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.”	Subdivision G 1 c: “A local educational agency may presume that a parent has authority to inspect and review records relating to the parent’s children unless the local educational agency has been <del>advised</del> <u>provided a copy of a judicial order or decree, or other legally-binding documentation</u> , that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.”	The proposed language mirrored the federal regulatory requirement. However, based on public comment, revised language to provide clarity and to ensure that non-custodial parents receive appropriate procedural protections.
	* N/A	Inserted new subdivision G 5 c: “ <u>c. A local educational agency may not charge a fee for copying a child’s IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E.7.</u> ”	Language inserted to comply with federal regulatory requirements.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	* N/A	<p>Inserted new language in subdivision G 9 regarding hearing procedures:  <u>“a. The local educational agency may:</u>  <u>(1) develop local procedures for such a hearing process; or</u>  <u>(2) obtain a hearing officer from the Supreme Court of Virginia’s special education hearing officer list in accordance with the provisions of 8VAC20-81-210 G.”</u></p>	Language inserted for clarity.
	* N/A	<p>Inserted new subdivision G 11 b:  <u>“b. Each local educational agency shall ensure that electronic communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child’s educational record.”</u></p>	Language inserted in response to public comments.
	* N/A	<p>Deleted language from proposed 8 VAC 20-81-110 E 6, and reinserted into new subsection J. in this section.</p> <p>In addition, modified language, as outlined below:  “J. Audio and video recording.  1. The local educational agency shall permit the use of audio recording devices at <del>IEP</del> meetings <u>convened to determine a child’s eligibility under 8VAC20-81-80, to develop, review, or revise the child’s IEP under 8VAC20-81-110 F., and to review discipline matters under 8VAC20-81-160 E.</u> The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. ...  2. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:</p>	In response to public comments, revised these provisions to apply to eligibility meetings and manifestation determination review meetings, as well as IEP meetings. Given the expanded scope of the provisions, they were moved from the section regarding IEPs to the section on Procedural Safeguards.

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>a. video recording devices at <del>IEP</del> meetings <u>convened pursuant to this chapter</u>; or</p> <p>b. Audio or video recording devices at meetings other than <u>those meetings that are identified in subdivision 1 of this subsection for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.</u></p> <p>3. These policies shall: ...</p>	
8 VAC 20-80-180	<p>* Subdivision B 2: 2. The local educational agency shall include a statement on the IEP...that the student has been informed of the rights that will transfer to the student on reaching the age of 18.</p>	<p>Revised subdivision B 2: 2. The local educational agency shall include a statement on the IEP...that the student <del>and parent(s) has</del> <u>have</u> been informed of the rights that will transfer to the student on reaching the age of 18.</p>	Revisions were made in response to public comments.
8 VAC 20-81-190	<p>* Subsection A: Requires that each LEA inform parents “of the option of mediation to resolve disputes involving the identification, evaluation of the child, or educational placement and services of the child or the provision of a free appropriate public education to the child, including matters arising prior to the filing of a state complaint or request for a due process hearing.”</p> <p>Subdivision F 1: “An individual who serves as a mediator:  1. May not be an employee of any local educational agency or the Virginia Department of Education if the Virginia Department of Education is providing direct services</p>	<p>Revised subsection A: Requires that each LEA inform parents “of the option of mediation to resolve disputes involving <u>any matter arising under Part B of the Act, including</u> the identification, evaluation <del>of the child</del>, or educational placement and services of the child, <del>or</del> the provision of a free appropriate public education to the child, <del>including and</del> matters arising prior to the filing of a state complaint or request for a due process hearing.”</p> <p>Revised subdivision F 1: “An individual who serves as a mediator:  1. May not be an employee of any local educational agency or the Virginia Department of Education if <del>the Virginia Department of Education</del> <u>it</u> is providing direct services to a child...;”</p>	<p>Based on guidance from US DOE, language was inserted to clarify the exact language of the federal statute and regulations.</p> <p>Language was changed for clarity.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	to a child...,”		
8 VAC 20-81-200	Subdivision D 1 b: “The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60 day regulatory timeline.”	Revised subdivision D 1 b: “The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay <del>completing completion of the</del> investigation within <del>the 60 day regulatory timeline</del> <u>60 calendar days.</u> ”	Language was changed for clarity.
8 VAC 20-81-210	Subsection A: “The Virginia Department of Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:”	Revised subsection A: “The Virginia Department of Education <del>administers a</del> <u>provides for an impartial</u> special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:”	Language was changed for clarity.
	* Throughout the section, the proposed regulations indicated that responsibility for the implementation of the due process hearing system would be shifted exclusively to VDOE, rather than the responsibility being shared, in part, with the Supreme Court of Virginia.	Throughout the section language was changed to note that the Supreme Court of Virginia continues to maintain certain responsibilities, rather than shifting those responsibilities to the Virginia Department of Education.	Based on significant public comment and to avoid even the appearance of impropriety, the Supreme Court of Virginia will continue to be responsible for the administration of the due process system, including recruitment, selection, and appointment of special education hearing officers, and applicable training. Therefore, all provisions regarding VDOE’s administration of the due process system were deleted.
	* N/A	Insert new subsection B: “B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.”	
	* Subdivisions B 1 through B 3 indicated that VDOE would establish procedures for the following: Recruitment, selection, and appointment of Special Education Hearing Officers; providing Special Education Hearing	Deleted subdivisions B 1 through B 3. Inserted new subsection C: “ <u>The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as</u>	Based on guidance from the Office of the Attorney General, language regarding VDOE’s certification process for Special Education Hearing Officers was inserted.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; and evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers.</p>	<p><u>special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.</u></p> <p>Inserted new subdivisions D 1 through D 3., which indicate that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Subdivision C 3 also outlines factors relative to a Special Education Hearing Officer's recertification process.</p> <p>Proposed subdivision B 4 has been retained as C 4.</p>	
	<p>* Subdivision D 1: "A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education."</p>	<p>Subdivision F 1: "A request for a hearing shall be made in writing <del>to the local educational agency and</del> to the Virginia Department of Education. <u>A copy of that request shall be delivered contemporaneously by the requesting party to the other party.</u>"</p>	<p>Based on public comments, revisions were made to require that regardless of which party files a due process request, the request must be made in writing, and provided contemporaneously to both VDOE and the other party.</p>
	<p>* Subdivision D 6: "6. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were</p>	<p>Subdivision F 6: "<del>6. The party requesting the due process hearing shall not be allowed</del> <u>The special education hearing officer has the discretionary authority to permit</u></p>	<p>Although the proposed provision mirrored federal regulatory requirements, based on significant public comment and to ensure fairness, revisions</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>not raised in the notice filed as described in subdivision 2. of this subsection.</p> <p>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.</p>	<p><u>either party</u> to raise issues at the <del>due process</del> hearing that were not raised in the notice <del>filed as described in subdivision 2. of this subsection</del> <u>by the party requesting the due process hearing in light of particular facts and circumstances of the case.</u></p> <p><del>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.</del></p>	<p>were made to grant special education hearing officers the authority to permit either party, not just the local educational agency, to raise issues at the hearing that were not raised in the due process notice.</p>
	<p>Subdivision I 3:</p> <p>b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).</p>	<p>Subdivision K 3:</p> <p>"b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), <u>even though the applicable appeal period has expired.</u></p>	<p>Language inserted for clarification.</p>
<p>* N/A</p>		<p>Inserted new provision L 6:  <u>"6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated."</u></p> <p>Inserted new provision N 16:  <u>"Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s) within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.</u></p> <p><u>a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is</u></p>	<p>Based on public comment, the role of implementation plans were reinserted to ensure that LEAs comply with hearing officers' decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or the withdrawal of the due process request.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.</u></p> <p><u>b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.</u></p> <p><u>c. The implementation plan:</u></p> <p><u>(1) must be based upon the decision of the hearing officer.</u></p> <p><u>(2) shall include the revised IEP If the decision affects the child's educational program.</u></p> <p><u>(3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.</u></p>	
	<p>* Subdivision L 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of the hearing;"</p>	<p>Subdivision N 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of <u>the a fair and impartial</u> hearing;"</p>	<p>The language was inadvertently omitted from the proposed language.</p>
	<p>* N/A</p>	<p>Inserted new provision O 5 b: At the prehearing stage "<u>b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute</u>".</p>	<p>Inserted language based on public comment to ensure uninterrupted and consistent proceedings.</p>
	<p>* Subdivision M 14: "Report findings of fact and decisions in writing to the parties but if a party is represented by an</p>	<p>Subdivision O 14: "Report findings of fact and decisions in writing to the parties <del>but if a party is represented by an attorney, then to their attorney</del></p>	<p>Revisions were made in response to public comments.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	attorney, then to their attorney and the Virginia Department of Education.”	<u>and their attorneys</u> and the Virginia Department of Education.”	
	* Subdivision N 3 b: “The special education hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.”	Subdivision P 3 b: “The special education hearing officer <u>or a party</u> may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.”	Language inserted for clarity.
	* N/A	Inserted new Q 1 e: “ <u>The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents’ participation in the resolution meeting.</u> ”	Language inserted for clarity.
	* Subdivision O 2 d: “If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent), ....”	Subdivision Q 2 d: “If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable "efforts have been made (and documented <del>as required to gain parental consent</del> <u>in accordance with the provision in 8VAC20-81-110 E 4),....</u> ”	In response to public comments and guidance from US DOE, revisions were made to clarify the LEA’s responsibility to document efforts to obtain parental participation in a resolution session.
	* N/A	Inserted new R 2 c: “The resolution period is part of, and not separate from, the expedited due process hearing timeline.”	Language inserted for clarity.
	* Subdivision Q 1: “1. The costs of an independent educational evaluation, Special Education Hearing Officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any of these	Subdivision S 1: “1. The costs of an independent educational evaluation <u>ordered by the special education hearing officer</u> , Special Education Hearing Officer, court reporters, and transcripts <del>that are incidental to the hearing</del> are shared equally by the local educational agency and the Virginia Department of Education. <del>Costs for any of these services incurred by a party for the specific benefit of that party’s case are the</del>	Based on guidance from US DOE, revised language to clarify if the parent disagrees with the evaluation completed by the LEA, the parent is entitled to an IEE at public expense.



Section number	Requirement at proposed stage	What has changed	Rationale for change
	services incurred by a party for the specific benefit of that party's case are the responsibility of that party."	<del>responsibility of that party."</del>	
8 VAC 20-81-220	* Subdivision B 1 a: "The biological parent(s) are allowing relatives...to act as a parent;"	Revised subdivision B 1 a: "The <del>biological</del> parent(s) are allowing relatives...to act as a parent;"	The provision applies to all individuals meeting the definition of "parent," not just "biological parent."
	* Subdivision B 2: "The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent,...can be identified; b. The local educational agency...cannot discover the whereabouts of a parent; c. The child is a ward of the state; or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia."	Subdivision B 2: " <u>Unless one of the exceptions outlined in subdivision B.1. of this section applies, The</u> the local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent, as defined in 8VAC20-81-10, can be identified; b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent; c. The child is a ward of the state <u>and either subdivision 1.a. or 1.b. of this subsection is also met;</u> or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia <u>and either subdivision 1.a. or 1.b. of this subsection is met.</u> "	In response to public comment, revised language to indicate that if a child with a disability is either an unaccompanied homeless youth or a ward of the state, a surrogate parent only needs to be appointed if no one meeting the definition of "parent" can be identified or the LEA cannot discover the whereabouts of a parent.
	Subdivisions B 5 through B 7.	Reorganized provisions in a new subsection as C 1 through C 3.	Revisions made for clarity.
	* Subdivision B 5: "The local educational agency shall establish procedures for determining whether a child needs a surrogate parent."	Subdivision C 1: "The local educational agency shall establish procedures <u>in accordance with the requirements of this chapter,</u> for determining whether a child needs a surrogate parent."	In response to public comment inserted clarifying language.
	* Subdivision B 7 b outlined that a surrogate parent's appointment may be terminated if:	Subdivision C 3 b outlines that a surrogate parent's appointment may be terminated if: "The child is found no longer	In response to public comment, all Virginia-specific parental consent provisions which were

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>“The child is found no longer eligible for special education services;”</p>	<p>eligible for special education services <u>and the surrogate parent has consented to the termination of services;</u>”</p>	<p>removed in the proposed regulations have been reinserted.</p>
	<p>* Subdivision C 2 c indicated that during the appointment of a surrogate parent, there should be “Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child;”</p>	<p>Subdivision D 2: Deleted the language previously included in C 2 c.</p>	<p>Based on guidance from US DOE, the language was deleted.</p>
<p>8 VAC 20-81-230</p>	<p>* Subdivision B 1 d: “A copy of the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....”</p> <p>* Subdivision G 2: “A copy of this agreement shall be submitted with the annual plan specified in subsection B of this section.”</p>	<p>Revised subdivision B 1 d: “<del>A copy of</del> <u>Any revisions to</u> the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....”</p> <p>Subdivision G 2: “A copy of <u>any revisions to</u> this agreement shall be submitted with the annual plan specified in subsection B of this section.”</p>	<p>Revisions made to limit unnecessary paperwork and to comply with current practice regarding the submission of a LEA's Annual Plan.</p>
	<p>* Subdivision D 1 regarding membership in local advisory committees: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. The committee shall include representation of gender and the ethnic population of the local school division.”</p>	<p>Revised subdivision D 1: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. <u>The committee shall include one teacher. The committee shall include representation of gender and the ethnic population of the local school division.</u> c. <u>Additional local school division personnel shall serve only as consultants to the committee.</u>”</p>	<p>Revisions were made in response to significant public comment. The requirement for school divisions to have a LAC was retained. However, revisions were made to ensure LACs could continue to be effective, while limiting the role of LEA personnel to remove the appearance of impropriety.</p>
	<p>* Subdivision F 2: “The local school division shall participate in transition planning conferences...in accordance with 34 CFR § 303.148(b).”</p>	<p>Revised subdivision F2: “The local school division shall participate in transition planning conferences...in accordance with <u>34 CFR § 303.148(b) §1437(a)(9) of the Act, and its federal implementing regulations.</u>”</p>	<p>Revisions were made based upon guidance from US DOE.</p>
<p>8 VAC 20-</p>	<p>* Subsection C:</p>	<p>Revised Subsection C:</p>	<p>Revisions were made to</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
81-250	1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the Virginia Board of Education.  2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.	1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the <del>Virginia Board of Education</del> <u>Superintendent of Public Instruction or designee.</u>  2. Such reimbursement shall be in lieu of <del>the state per pupil basic aid</del> <u>otherwise other state education funding</u> available for each child.	comply with the Virginia Appropriations Act and the Standards of Quality funding formulae.
8 VAC 20-81-300	Subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;”	Revised subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public <u>benefits or</u> insurance programs in order for their child to receive a free appropriate public education;”	Revisions made to comply with federal regulatory requirements.
8 VAC 20-81-320	Subdivision C 1: “...having the knowledge and skills to service children with disabilities....”	Revised subdivision C 1: “...having the knowledge and skills to <del>service</del> <u>serve</u> children with disabilities....”	Typographical error.
	* Subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child's IEP.”	Inserted new language in subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child's IEP. <u>Related services providers must be qualified consistent with the requirements of subdivision 19(a) of 8VAC20-81-20.</u> ”	Language inserted to comply with federal regulatory requirements.
8 VAC 20-81-340	Referenced caseloads for “Severe Disabilities”.	Deleted references to “Severe Disabilities”.	References to “Severe Disabilities” were deleted from other sections of the regulations, but inadvertently were retained in this section.
	References to “Developmental Delay: age 5-8”	Revised: “Developmental Delay: age 5- <del>8</del> 6”	The revision was made in response to public comments.
	Outlined case load standards in Figure 1.	Revised caseload standards for Level II children with a paraprofessional 100% of the time,	The caseload standards were revised to correct typographical errors. As

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>who have an Emotional Disability, Hearing Impairment, Learning Disability, Intellectual Disability, Orthopedic Impairment, or Other Health Impairment.</p> <p>Clarified that there are not caseload standards for Level II children with Speech or Language Impairment.</p>	corrected, the caseload standards mirror current requirements.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

See attached document.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

**Note: The current regulations are proposed for repeal (8 VAC 20-80-10, et seq.) and new regulations (8 VAC 20-81-10, et seq.) are being promulgated.**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-80 et seq.	8 VAC 20-81 et seq.	Repealed	The following revisions were made throughout the chapter: Since the Board of Education closed the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H), references to it were deleted. In response to public comment, the term “mental retardation” was replaced with “intellectual disability,” and the term “emotional disturbance” was replaced with “emotional disability.” To ensure consistency, the term “LEA” was replaced with “local educational agency. In addition, for clarity and accuracy, citation, typographical, and grammatical errors were corrected. Finally, in some sections, such as regarding Surrogate Parents, sections were reorganized for clarity.
Foreword	Foreword and	Repealed	Although not regulatory, it is noted that the Foreword was

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
and Preamble	Preamble		substantially rewritten to reflect updated information, and the Preamble was modified in response to public comment, and to note the impact of the No Child Left Behind Act of 2001.
10 Repealed	10 Definitions	Repealed	<p>Definitions for the following terms have been added to comply with federal requirements, or to provide clarity: Act; Alternative assessment; Career and technical education; Collaboration; Core academic subjects; Co-teaching; Dangerous weapon; Destruction of information; Educational placement; Educational service agencies; Eligible student; Equipment; Excess costs; Federal core academic subjects; Highly qualified special education teacher; Homeless children; Individualized education program team; Intellectual disability; Limited English proficient; Long-term placement; National Instructional Materials Access Center (NIMAC); National Instructional Materials Accessibility Standard (NIMAS); Personally identifiable; Scientifically-based research; Serious bodily injury; Services plan; Special Education Hearing Officer; Timely manner; Universal design; and Ward of the state.</p> <p>Definitions for the following terms were modified to comply with federal requirements, in response to public comments, or to provide clarity: Age of eligibility; Alternate assessment; Assistive technology device; Autism; Change in placement; Change in placement for purposes of discipline; Child with a disability; Comprehensive Services Act; Consent; Developmental delay; Education record; Free appropriate public education; Functional Behavioral Assessment; Hearing impairment; Home tutoring; Impartial hearing officer; Implementation plan; Individualized education program; Initial placement; Interpreting services; Local educational agency (LEA); Orientation and mobility services; Orthopedic impairment; Other health impairment; Parent; Participating agency; Private school children with disabilities; Psychological services; Related services; School health services and school nurse services; Social work services in schools; Special education; Specific learning disability; Speech or language impairment; State-operated programs; Transition Services; and Vocational education.</p> <p>Definitions for the following terms were moved to this section from another section of the regulations: Controlled substance; Illegal drug; and Weapon.</p> <p>The following terms were deleted: Child study committee; Interpreting personnel; Itinerant; Qualified personnel; and Severe disability.</p>
30 Repealed	20 Functions of the Virginia	Repealed	To comply with federal requirements, provisions were included or modified which outline the VDOE's responsibilities to do the following:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	Department of Education		<ul style="list-style-type: none"> <li>• Ensure that all children with disabilities have a right to a FAPE, including, but not limited to children receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;</li> <li>• Ensure children with disabilities are included in all state-wide and division-wide assessments;</li> <li>• Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children;</li> <li>• Comply with public participation guidelines in the development of policies and procedures;</li> <li>• Supervise educational programs;</li> <li>• Assist LEAs and participating state agencies to ensure state and federal requirements regarding “least restrictive environment” (LRE) are implemented;</li> <li>• Review and evaluate compliance of licensed private nonsectarian special education schools;</li> <li>• Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations;</li> <li>• Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia’s objectives under the “No Child Left Behind Act” (NCLB), and address graduation and drop-out rates, including performance indicators to assess progress toward achieving these goals;</li> <li>• Establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions);</li> <li>• Respond to complaints filed by parents regarding staff qualifications;</li> <li>• Ensure compliance with the requirements of the McKinney-Vento Act as it impacts the provision of special education and related services to children with disabilities;</li> <li>• Report and certify annually to the United States Department of Education the number of children with disabilities receiving special education and related services on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee;</li> <li>• Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in LEAs, and if so, that VDOE takes the steps required by federal mandates;</li> <li>• Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities;</li> <li>• Ensure that if VDOE provides direct services to children with disabilities, it complies with state and federal</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>requirements, as if it is a LEA;</p> <ul style="list-style-type: none"> <li>• Ensure a practical method is developed and implemented to examine data to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions for children with disabilities, and if so, that VDOE follows federal requirements;</li> <li>• Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities;</li> <li>• Ensure that parents of children with disabilities are not required to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services; and</li> <li>• Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations.</li> </ul> <p>In response to public comment, the provision outlining VDOE’s responsibility to administer a special education due process system was revised to clarify VDOE’s roles and responsibilities.</p> <p>In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system of personnel development was deleted.</p> <p>The due date for the SSEAC’s annual report to the Board of Education was modified from July 1<sup>st</sup> of each year to October 1<sup>st</sup>.</p> <p>To minimize the provisions that exceed federal requirements, the requirement that procedures be established to disseminate information from research, demonstration programs, and projects regarding children with disabilities was deleted.</p>
40 Repealed	30 Responsibilities of local school divisions and state-operated programs	Repealed	<p>The provisions outlining which LEA is responsible for the provision of FAPE to a student were restructured to clarify existing areas of ambiguity. In addition, provisions were added to address emancipated minors, married minors, students with disabilities placed in sponsored residential homes; and residency disputes between LEAs, or between a parent and the LEA. A provision was also added indicating that children with disabilities are entitled to FAPE regardless of citizenship or immigration status. Finally, revisions were made to clarify that the LEA of residence remains responsible for the provision of FAPE in the least restrictive environment for students with disabilities who are placed long-term in a SOP for non-educational reasons.</p>
45	40	Repealed	Provisions were added to require that special education

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Repealed	Special Education Staffing Requirements		<p>teachers be “highly qualified,” in accordance with the federal special education regulations.</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements;</li> <li>• A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and</li> <li>• The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent.</li> </ul> <p>To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child’s IEP team, rather than a 5 ½ hour day.</p> <p>To provide clarity and as a result of recent case law, the provisions regarding the qualifications for educational interpreting services have been modified to provide some flexibility regarding the credentials that an educational interpreter must obtain, while ensuring that children with disabilities are provided with quality interpreting services. The provisions which previously permitted waiver of the qualifications have been removed to comply with federal regulatory requirements, but a phase-in process for the new criteria has been included. In addition, a provision was inserted to clarify that the qualifications of an individual providing sign language services to a child who is not deaf or hard of hearing will be determined by the LEA.</p>
50 Repealed	50 Child find	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• “Wards of the State” must now be included in each LEA’s child find program;</li> <li>• Each LEA’s responsibilities for child find activities relative to parentally-placed private school students were expanded;</li> <li>• Screenings for instructional purposes are not considered an evaluation; and</li> <li>• VDOE prohibits State and LEA personnel from requiring parents of children with disabilities to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services.</li> </ul>



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			<p>However, LEA personnel may share classroom-based observations with the parents regarding a student's performance, or need to be evaluated.</p> <p>In accordance with the <i>Code of Virginia</i> and the Board of Education regulations, children must be screened for scoliosis.</p> <p>To minimize state regulations that exceed the federal requirements, the following requirements were modified:</p> <ul style="list-style-type: none"> <li>• Specific provisions which outlined how a LEA was required to conduct its annual public awareness campaign were replaced by a single provision which requires that each LEA have procedures to document its public awareness campaign;</li> <li>• The timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings, were removed and replaced by a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the <i>Code of Virginia</i> and other state regulations; and</li> <li>• The Child Study Committee requirements were removed, and replaced by a framework for a school-based structure for referrals, including timelines, required team members, and procedures for the referral process. The new provisions provide LEAs with greater flexibility to use scientific, response to intervention methods, while maintaining procedural protections for children suspected of having a disability.</li> </ul>
52 Repealed	60 Referral for initial evaluation	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• A referral for an initial evaluation may be made by the VDOE or any state agency;</li> <li>• Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments;</li> <li>• Exceptions to the 65 business day timeline for the completion of an evaluation; and</li> <li>• New parental consent provisions for initial evaluations, including the LEA's options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances, parental consent is not required for the initial evaluation of a ward of the state.</li> </ul> <p>To increase flexibility for local school divisions and parents,</p>

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			<p>the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>To minimize state regulations that exceed the federal requirements, while providing LEAs with greater flexibility to use scientific, response to intervention methods, and while maintaining procedural protections for children suspected of having a disability, the multiple requirements and timelines regarding Child Study Committees were deleted and provisions reflecting the new school-based structure for referrals were inserted.</p>
54 Repealed	70 Evaluation and Reevaluation	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• The team must review local or state assessments and classroom-based observations;</li> <li>• The team must determine what additional data is necessary to determine the child’s educational needs, the present level of academic achievement and related developmental needs, and whether or not the child needs or continues to need special education and related services;</li> <li>• New requirements regarding the administration of an evaluation in the language and form most likely to yield accurate information;</li> <li>• A written copy of the evaluation report must be provided at no cost to the parent;</li> <li>• Assessments of a child with a disability, or who is suspected of having a disability, who transfers between LEAs in the same school year, must be coordinated by the LEAs to ensure prompt completion of the full evaluation;</li> <li>• A reevaluation must be completed if the LEA determines that the child’s educational or related services needs warrant a reevaluation, and at least every three years, unless the parent and the LEA agree that an evaluation is unnecessary;</li> <li>• A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise;</li> <li>• The LEA’s responsibilities regarding parental consent when administering an evaluation that is administered to all children, and when the parent of a child who is home-instructed, home-tutored, or parentally-placed in a private school refuses, or fails to respond to a request to provide consent to evaluate;</li> <li>• The term “test” was replaced with the term “assessment;”</li> <li>• Modifications were made to the requirements if additional data is not needed for an evaluation, including: <ul style="list-style-type: none"> <li>➤ A LEA must provide the parent with prior written notice (PWN) of the right for a parent to request an evaluation to determine the child’s educational needs; and</li> <li>➤ A LEA is not required to gather additional information</li> </ul> </li> </ul>

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			<p>unless the parent requests the evaluation for the purpose of determining if the child continues to have a disability or to determine the child's educational needs.</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• A provision was added, indicating that the parent may resolve a dispute regarding the LEA's refusal to do an evaluation, via mediation or due process procedures;</li> <li>• Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and</li> <li>• A provision was inserted, noting that a LEA is not required to evaluate a child with a disability who graduates with a standard or advanced diploma, but the parent must receive PWN of the change in placement.</li> </ul> <p>To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified:</p> <ul style="list-style-type: none"> <li>• Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with federal regulatory requirements;</li> <li>• The provision allowing the group to conduct its review without a meeting was deleted; and</li> <li>• The requirement that a triennial evaluation be initiated no less than 65 business days prior to the third anniversary of the last date of eligibility was removed. Rather, a reevaluation process must be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.</li> </ul> <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>In response to public comment, inserted a provision requiring that a written copy of the evaluation report(s) be provided to the parent(s) prior to or at the meeting where eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.</p>
56 Repealed	80 Eligibility	Repealed	<p>The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section.</p> <p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• In addition to determining whether or not a child is eligible</li> </ul>

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			<p>for special education and related services, the eligibility group must determine the educational needs of the child;</p> <ul style="list-style-type: none"> <li>• A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in math or reading, including the essential components of reading instruction;</li> <li>• The requirements for determining a child eligible as a child with a specific learning disability; and</li> <li>• Parental consent must be obtained before personally identifiable information is released for children who are parentally placed in a private school outside their LEA of residence.</li> </ul> <p>The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations:</p> <ul style="list-style-type: none"> <li>• Required eligibility group considerations;</li> <li>• Requirements for documenting the eligibility group's determination of eligibility;</li> <li>• New required members of the eligibility group; and</li> <li>• Requirements that as part of the eligibility process, the eligibility group ensure that a child is, or has been, observed in routine classroom instruction.</li> </ul> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group;</li> <li>• The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120; and</li> <li>• New eligibility criteria were added for all disability categories, and a requirement was inserted that LEAs use the new criteria as part of the determination of whether a child has a disability.</li> </ul> <p>The ages of eligibility for "Developmental Delay" were changed from two through eight, inclusive, to two through six, inclusive. School divisions that have eliminated the upper age range for ages 7 and 8 report documented success in providing direct support to children who are at risk for academic or behavioral difficulty in the general education classroom. They have reduced the over identification of children, particularly for children of color and poverty, while at the same time placing more emphasis on timely interventions within their general education programs. Parents and school personnel still retain the right to request to initiate the evaluation-eligibility process of children suspected of having a disability. Some children, served under the DD category from ages two to six, inclusive, will continue eligibility for</p>

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			<p>special education and related services and be more properly served in one of the other disability categories, such as autism, other health impaired, or multiple disabilities.</p> <p>To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.</p>
<p>58 Repealed</p>	<p>90 Termination of special education and related services</p>	<p>Repealed</p>	<p>To comply with federal requirements, each LEA must complete a summary of academic achievement and functional performance when a child with a disability graduates with a standard or advanced diploma or reaches the age of 22.</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• A provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services;</li> <li>• Inserted a provision that although an evaluation must be completed prior to the complete termination of special education and related services, to terminate a related service, the IEP team may rely on current data in the child's education record, or complete an evaluation in accordance with 8 VAC 20-81-70.</li> <li>• Provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.</li> </ul>
<p>60 Repealed</p>	<p>100 Free appropriate public education</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential;</li> <li>• VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015;</li> <li>• LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C;</li> <li>• Provisions outlining each LEA's responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and</li> <li>• Provisions outlining VDOE's responsibilities regarding the methods and payments for ensuring children with</li> </ul>

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			<p>disabilities are provided with FAPE.</p> <p>To comply with federal regulatory requirements, the provisions outlining the LEA's responsibility for ensuring that a child with a disability may participate in physical education was modified.</p> <p>To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each LEA's responsibilities regarding the provision of personal devices, the length of the commute of a child with a disability, extended school year services, and disability harassment.</p> <p>To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities.</p> <p>For clarity, inserted:</p> <ul style="list-style-type: none"> <li>• Provisions that FAPE must be provided to children with disabilities who meet the age of eligibility requirements in 8 VAC 20-81-10, and to children with disabilities who reside within the school division but do not hold a valid U.S. citizenship or student visa;</li> <li>• A cross-reference to 8 VAC 20-81-130 A 2, which also references the LEA's responsibility to ensure that supplementary aids and services are provided, as determined appropriate and necessary by the IEP team, to provide children with disabilities an equal opportunity to participate in non academic and extracurricular activities; and</li> <li>• A requirement that the IEP team determines the length of the school day for preschool-aged children with disabilities.</li> </ul>
62 Repealed	110 Individualized education program	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• The LEA's responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings;</li> <li>• The LEA's option to permit a child's IEP to be amended without convening an IEP meeting, if the parent and the LEA agree, including that the IEP team members must be informed of any modifications, the meeting does not substitute for the annual IEP review, and upon request of the parent, the LEA must provide a revised copy of the IEP with the amendments incorporated;</li> <li>• The IEP team must include not less than one regular education teacher of the child, and not less than one special education teacher of the child, rather than "at least one" of each;</li> <li>• The provision previously outlined in 8 VAC 20-80-62 C. 2.</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>c., was replaced with a provision outlining the LEA's obligation to obtain parental consent, or the consent of a child who has reached the age of majority, and to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services;</p> <ul style="list-style-type: none"> <li>• A LEA must, at the request of the parent, invite the Part C coordinator or other representative of the Part C system to attend the initial IEP meeting to assist with the smooth transition of services, and the notice of the initial IEP meeting must inform the parent(s) of this right;</li> <li>• If the LEA complies with certain requirements, a required member of the IEP team may be excused from attending the IEP meeting, in whole or in part;</li> <li>• The distinction between the secondary transition services provided to children with disabilities at age 14, and at age 16 have been deleted, including the distinction in the IEP meeting notice requirements;</li> <li>• During the development, review, and revision of a child's IEP, the team must consider the academic, developmental, and functional needs of the child; however, the requirement that the results of the child's performance on any general state or division wide assessment program be considered was deleted;</li> <li>• Nothing requires the inclusion of information into a child's IEP beyond what is specifically required;</li> <li>• The content of a child's IEP must include, in part, the following: A statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; a statement of any individual accommodations or modifications that are necessary to measure the child's academic and functional performance on a state and division-wide assessment, and if the IEP team determines that the student must take an alternate assessment, a statement, which includes federally-required elements; a statement of how the child's progress toward the annual goals will be measured and when the periodic reports on the progress the child is making will be provided; and required information regarding secondary transition, including appropriate measurable postsecondary goals based on age-appropriate transition assessments, and transition services, including courses of study, which are based on the child's needs, and consider the child's preferences and interests;</li> </ul>

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			<ul style="list-style-type: none"> <li>• Deleted former provision 8 VAC 20-80-62 B. 9., which noted that a LEA, teacher, or other person is not required to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives;</li> <li>• Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and</li> <li>• In the development of an IEP for a preschool-aged child with a disability, the IEP team must consider an IFSP that contains the IFSP content contained in Part C, and may incorporate those components in the child's IEP.</li> </ul> <p>For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination, also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary. The provision previously at 8 VAC 20-80-62 B. 5. was deleted given the insertion of the above provision.</p> <p>To ensure the provision of FAPE to a child with a disability:</p> <ul style="list-style-type: none"> <li>• An IEP must be implemented as soon as possible following receipt of parental consent; and</li> <li>• Transition services must be initiated for a student with a disability prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14. Not later than the first IEP to be in effect when the child turns 16, the IEP must include, if appropriate, a statement of interagency responsibilities or any needed linkages.</li> </ul> <p>In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs;</li> <li>• The LEA shall have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile;</li> <li>• The LEA must give the parent(s) a copy of the child's IEP at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days;</li> <li>• An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally;</li> <li>• For a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion; and</li> </ul>



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			<ul style="list-style-type: none"> <li>• The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes.</li> </ul> <p>The following provisions were deleted:</p> <ul style="list-style-type: none"> <li>• Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child’s caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a “parent;”</li> <li>• To comply with applicable case law, from 8 VAC 20-80-62 F. 6., the statement, “Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B.,” and</li> <li>• Former provision 8 VAC 20-80-62 F. 5. f., regarding the Literacy Passport Test, as it is no longer applicable.</li> </ul> <p>In response to public comment:</p> <ul style="list-style-type: none"> <li>• Inserted provisions requiring that each child’s IEP team consider the child’s needs for benchmarks or short-term objectives, even if child is not participating in the Virginia Alternate Assessment Program. That consideration must be documented;</li> <li>• Inserted a requirement that progress reports must be provided at least as often as parents are informed of the progress of their children without disabilities;</li> <li>• Inserted a requirement that at least one year before a student reaches the age of majority, the student’s IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights; and</li> <li>• Expanded the provisions regarding allowing a parent to audiotape or videotape a meeting, distinguishing between the parent’s right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and the LEA’s option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at meetings convened under the special education regulations, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings. Given the expanded language in these provisions, they were moved to the new 8 VAC 20-81-170.</li> </ul>
N/A	120 Transfer students		<p>For clarity, these provisions, which were previously included as part of 8 VAC 20-80-56, have been moved to their own section. To comply with federal regulatory requirements, the new LEA must take reasonable steps to obtain the child’s records from the previous LEA in which the child was enrolled, and the previous LEA must take reasonable steps to respond to the request from the new LEA.</p> <p>For clarity, the following provisions have been included:</p> <ul style="list-style-type: none"> <li>• If an LEA is not forthcoming in the provision of a child’s educational records, VDOE may be contacted for</li> </ul>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>assistance;</p> <ul style="list-style-type: none"> <li>• If the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting, pending an evaluation, if an evaluation is necessary;</li> <li>• The LEA may develop and implement an interim IEP while obtaining and reviewing the information needed to develop a new IEP;</li> <li>• If there is a dispute between the new LEA and the parent regarding interim services or a new IEP, the LEA must provide FAPE to the child in consultation with the parents(s), including services comparable to those described in the child's IEP from the previous LEA;</li> <li>• If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and</li> <li>• To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA's responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition period during which the former CSA team is responsible for funding services, and the new LEA must review and revise, if necessary, and implement a new IEP.</li> </ul>
64 Repealed	130 Least restrictive environment and placements	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities;</li> <li>• LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child's IEP team to participate in nonacademic settings. A cross-reference to 8 VAC 20-81-100 H. was inserted; and</li> <li>• Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities.</li> </ul> <p>Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include "integrated service delivery."</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• Added language to emphasize that the LRE provisions apply to children with disabilities, aged two to 21;</li> </ul>
65	140	Repealed	To increase flexibility for school divisions and the Virginia

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Repealed	Placement of children at the Virginia schools		School for the Deaf and Blind at Staunton (VSDB-S), deleted the requirement that school divisions and VSDB-S develop contractual agreements to ensure compliance with the federal and state special education requirements. However, retained the provisions that outline responsibility for the transportation of students with a disability to and from VSDB-S.
66 Repealed	150 Private School Placement	Repealed	<p>To comply with federal requirements, the previous reference to “residential placement” in 8 VAC 20-80-66 A. 1., was modified to reference “a private school or facility.”</p> <p>The federal language modified each LEA’s responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, LEAs are responsible for those children who are parentally-placed in private schools, which are physically located within the LEA. Additional federal changes to each LEA’s responsibilities regarding parentally-placed private school children with disabilities include the following:</p> <ul style="list-style-type: none"> <li>• An expansion of the LEA’s child find responsibilities, including ensuring that comparable activities to those for public school students are undertaken, that LEA staff meet with representatives of private schools to determine how to conduct a thorough and complete child find process, and that the child find process ensure the equitable participation of parentally-placed private school children, and an accurate count of that population of students;</li> <li>• If a LEA has not expended all of its proportionate share amount for equitable services by the end of the fiscal year for which Congress appropriates the funds, the LEA must carry the funds over for an additional year;</li> <li>• LEAs may supplement, but not supplant, the proportionate share amount of federal funds for the provision of equitable services;</li> <li>• In calculating the proportionate share amount, LEAs must engage in timely and meaningful consultation with private school representatives prior to completing child find responsibilities to determine the number of parentally-placed private school children attending private schools within the LEA;</li> <li>• The child count must be conducted on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee;</li> <li>• There has been an expansion of the requirements regarding the LEA’s responsibility to consult with private school representatives to include five different elements,</li> </ul>

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			<p>including how, where, and by whom special education and related services will be provided for parentally-placed private school students, and the types of services to be provided. If the LEA disagrees with the private school representatives regarding the provision of services or the types of services, the LEA must provide them with a written explanation of the LEA's reasoning;</p> <ul style="list-style-type: none"> <li>• Following consultation, the LEA must obtain a written affirmation from the private school representatives;</li> <li>• Under certain circumstances, private school representatives may file a complaint to VDOE against the LEA, and if the complainant is dissatisfied with VDOE's decision, the decision may be appealed to the U.S. Department of Education;</li> <li>• The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public school, except that the requirements regarding highly qualified special education teachers do not apply;</li> <li>• Services may be provided by LEA employees, or through contract with the LEA;</li> <li>• Special education and related services provided to parentally placed private school children with disabilities, must be secular, neutral, and nonideological;</li> <li>• The dispute resolution options available to parentally placed private school children apply to the LEA where the private school is located; and</li> <li>• Each LEA must maintain for its records, and provide to VDOE, certain data regarding parentally-placed private school children.</li> </ul> <p>For clarity, and to comply with federal requirements, the federal definition of the terms "elementary school" and "secondary school" were added. A new definition of the term "private school," was also included, outlining applicable federal and state requirements.</p>
68 Repealed	160 Discipline procedures	Repealed	<p>The section was revised to comply with federal requirements, including the addition or modification of the following provisions:</p> <ul style="list-style-type: none"> <li>• School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct;</li> <li>• A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year;</li> <li>• A child with a disability may be removed from their current educational placement to another setting for disciplinary reasons to the extent that the alternatives are applied to children without disabilities;</li> </ul>

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			<ul style="list-style-type: none"> <li>• The LEA's responsibilities for providing services to a child with a disability during a short-term removal, including the LEA's responsibilities to ensure that beginning on the 11<sup>th</sup> day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, and be included in VDOE and division wide assessment programs;</li> <li>• The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child's behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis;</li> <li>• Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child's disability. Special circumstances now include if the child inflicts serious bodily injury while at school or at a school function;</li> <li>• The LEA's responsibilities for providing services to a child with a disability during a long-term removal, including the LEA's responsibilities to ensure that the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, be included in VDOE and division wide assessment programs, and receives, as appropriate, a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) to address the behavior violation so that it does not recur;</li> <li>• Deleted the requirement that the LEA automatically conduct a FBA and the IEP team meet to develop a BIP, if it has not already done so, no later than 10 business days after first removing a student for more than 10 school days in a school year, or commencing a long-term removal. Rather, a BIP must be developed, at a minimum when a student's behavior interferes with his learning or that of others, or if the IEP team determines that the child's behavior is a manifestation of his disability and a FBA or BIP have not already been completed;</li> <li>• Deleted the provisions, which previously appeared in 8 VAC 20-80-68 C. 4. b., regarding determining that maintaining a child with a disability in the current placement is substantially likely to result in injury to the student or others, except that if an LEA believes that maintaining the student in the current educational placement is substantially likely to result in injury to the child or others, the LEA may request a due process hearing, and a Special Education Hearing Officer may order a change in placement to an</li> </ul>

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			<p>IAES for not more than 45 school days;</p> <ul style="list-style-type: none"> <li>• A manifestation determination decision must be made by the LEA, the parent(s), and the relevant members of the IEP team, rather than by “the IEP team and other qualified personnel;” therefore, the definition of “other qualified personnel” was also deleted;</li> <li>• The provisions, which previously appeared at 8 VAC 20-80-68 C. 5. (2), were replaced with the new federal requirements for determining whether or not a child’s behavior is a manifestation of his disability, including the LEA’s responsibilities if the child’s behavior is or is not a manifestation of his disability;</li> <li>• Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.;</li> <li>• Added provisions regarding the applicable timelines for an expedited due process hearing, including 20 school days to complete a hearing from the date the request for the hearing is filed, 10 school days following the hearing to issue a determination, and 7 calendar days to convene a resolution session, unless waived;</li> <li>• A Special Education Hearing Officer may return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of the federal requirements or the child’s behavior was not a manifestation of the child’s disability;</li> <li>• The provisions which previously outlined a child’s placement during an appeal, and which included a child’s right to “stay put” in the current educational placement during an appeal were deleted. Instead, a child with a disability must remain in the IAES pending the decision of the Special Education Hearing Officer or until the expiration of the time for the disciplinary placement;</li> <li>• Deleted the provision which previously permitted the “behavior or performance of the student” to trigger protections for a student not yet eligible for special education and related services;</li> <li>• A LEA must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred, a teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA;</li> <li>• A LEA is not deemed to have knowledge that a child is a child with a disability if the parent has not allowed a previous evaluation of the child, has refused services for the child, or the child has been evaluated and determined ineligible;</li> <li>• Previous provisions from 8 VAC 20-80-68 C. 9. were deleted; and</li> <li>• The LEA is required to include in the records of a child with</li> </ul>

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			<p>a disability a statement of any current or previous disciplinary action that has been taken against the child, transmit the statement to the VDOE upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students, and include the statement in the child's educational records, and with the child's IEP, when the child transfers from one school to another. Provisions which outline the content of the statement were also added.</p> <p>For clarity, the definitions of the following terms were included in 8 VAC 20-81-10: Weapon, Controlled substance, Illegal drug, and Serious bodily injury.</p> <p>In response to public comment, inserted additional language regarding FBAs and BIPs, to clarify that when a child's behavior impedes his learning or that of others, the IEP must consider the use of positive behavioral interventions, strategies and supports to address the behavior. Also inserted provisions requiring the IEP team to consider developing goals and services to address the child's behavioral needs; or conducting a FBA and determining the need for a BIP. In addition, included language emphasizing that if a FBA is an evaluation, then the parents are entitled to receive an independent educational evaluation, if they disagree with the evaluation.</p>
70 Repealed	170 Procedural safeguards	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• In the case of a child with a disability who is transitioning from Part C to Part B services, the parent must be informed that an invitation to the initial IEP meeting must, at the parent's request, be sent to the Part C service coordinator or other representative to assist with a smooth transition;</li> <li>• To ensure parent involvement in placement decisions, parents must be provided with meeting notice meeting all requirements outlined in 8 VAC 20-81-110 E.;</li> <li>• The LEA must take whatever action is necessary to ensure that the parent understands and is able to participate in group discussions regarding the child's educational placement;</li> <li>• A child's placement in an IAES placement is an exception to the requirement that IEP teams determine a child's placement;</li> <li>• A parent is entitled to only one independent education evaluation (IEE) at public expense each time the LEA conducts an evaluation component with which the parent disagrees;</li> <li>• If a parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the evaluation results must be considered by the LEA, if it meets LEA criteria, in decisions regarding FAPE, and it</li> </ul>

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			<p>may be presented by either party in a due process hearing;</p> <ul style="list-style-type: none"> <li>• If a Special Education Hearing Officer requests an IEE as part of a due process hearing, it must be at public expense;</li> <li>• The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted;</li> <li>• The events which trigger the requirement to provide a copy of the procedural safeguards document (PSD) were modified, and it was indicated that posting of a LEA's PSD on its Web site does not satisfy the requirement to provide the PSD, as required;</li> <li>• The required content of the PSD was modified;</li> <li>• The parental consent provisions were modified, including the following: <ul style="list-style-type: none"> <li>➤ Consent is required prior to accessing a child's public benefits or insurance;</li> <li>➤ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services;</li> <li>➤ Consent is not required prior to administering a screening to determine appropriate instructional strategies;</li> <li>➤ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state;</li> <li>➤ A LEA may, but is not required to, use mediation or due process if the parent fails to respond to a request for consent for an initial evaluation, or to override a parent's refusal to consent for an initial evaluation or reevaluation;</li> <li>➤ If a parent refuses consent, or fails to respond to a request for consent, for the initial provision of special education and related services, the LEA may not use mediation or due process to obtain consent. However, the LEA's failure to provide the special education and related services is not considered a denial of FAPE, and the LEA is not required to convene an IEP meeting or develop an IEP;</li> <li>➤ If a parent of a parentally-placed private school child refuses consent for an initial evaluation or reevaluation, the LEA may not use mediation or due process to secure consent; however, the child will not be considered eligible for equitable services;</li> <li>➤ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and</li> <li>➤ The LEA must make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services.</li> </ul> </li> <li>• LEAs using private insurance or public insurance and benefits to pay for services required for the provision of FAPE must provide the parent with notice and obtain parental consent as outlined in 8 VAC 20-81-300;</li> <li>• An LEA must comply with a parent's request to inspect and</li> </ul>



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			<p>review their child’s educational records before a resolution session is convened in accordance with 8 VAC 20-81-210;</p> <ul style="list-style-type: none"> <li>• Modifications were made to the provisions outlining when parental consent is required prior to the disclosure of personally identifiable information, including that consent is required before personally identifiable information is shared between the LEA where a student resides and a LEA where the student is parentally-placed in a private school;</li> <li>• An LEA must provide the parent a copy of the child’s IEP at no cost; and</li> <li>• If a LEA makes the option available, parents of a child with a disability may elect to receive PWN, the PSD, and notice of a request for due process by electronic mail.</li> </ul> <p>In accordance with guidance from the U.S. Department of Education and the provisions of the <i>Code of Virginia</i>, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. A definition of electronic signature is included.</p> <p>Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300.</p> <p>For clarity:</p> <ul style="list-style-type: none"> <li>• Expanded the provision permitting a hearing to be held to challenge in a child’s education records; and</li> <li>• Inserted into this section provisions that were previously included in 8 VAC 20-80 62 D. 6. regarding allowing a parent to audiotape or videotape a meeting. These provisions were expanded to grant parents the right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and to provide LEA’s the option to have policies that prohibit, limit, or otherwise regulate the use of video recording devices at meetings, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings.</li> </ul> <p>In response to public comment:</p> <ul style="list-style-type: none"> <li>• Inserted a provision requiring LEAs to have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile;</li> <li>• Inserted a requirement that a LEA may presume a parent has the authority to inspect and review a child’s education records unless provided a copy of a judicial order or decree, or other legally-binding documentation; and</li> <li>• Clarified that LEAs must ensure that electronic communications regarding any matter associated with the child be part of the child’s education record.</li> </ul>

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72 Repealed	180 Transfer of rights to students who reach the age of majority	Repealed	<p>To comply with modifications to the <i>Virginia Code</i>, previous provision 8 VAC 20-80-72 C. 4. was revised to indicate that an adult student will not be considered competent if admitted to a facility for the training, treatment, and habilitation of persons with mental retardation, and to delete the section of that provision which stated that an adult student will not be considered competent if in a coma and eligible for admission to a state hospital.</p> <p>In response to public comments, inserted a requirement that at least one year before a student reaches the age of majority, the student's IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights</p>
74 Repealed	190 Mediation	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> <li>• Mediation is available to resolve any matter arising under Part B of IDEA at any time a joint resolution is made to VDOE by the LEA and the parent, including matters arising prior to the filing of a state complaint or request for due process;</li> <li>• VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation.</li> <li>• Qualified mediators must be trained in effective mediation techniques; and</li> <li>• If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements.</li> </ul> <p>To assist in complying with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and</li> <li>• Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.</li> </ul>
76 Repealed	210 Due process hearing	Repealed	<p>To comply with federal requirements, numerous provisions were added, including the following:</p> <ul style="list-style-type: none"> <li>• Timelines for filing a request for a due process hearing;</li> <li>• The LEA's authority to use due process to obtain parental consent;</li> <li>• The LEA's authority to request an expedited due process hearing;</li> <li>• Sufficiency of a due process notice, including the procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the</li> </ul>

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			<p>notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied;</p> <ul style="list-style-type: none"> <li>• The LEA's responsibility to document reasonable efforts to obtain parental participation in the resolution meeting;</li> <li>• A copy of the PSD must be provided by a LEA upon receipt of the parent's first request for a due process hearing in a school year;</li> <li>• The qualifications of the Special Education Hearing Officer;</li> <li>• The LEA's responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C;</li> <li>• An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing;</li> <li>• A Special Education Hearing Officer's decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met;</li> <li>• The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements;</li> <li>• Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved;</li> <li>• A parent is entitled to an IEE at public expense if the parent disagrees with the evaluation completed in response to an order by the Special Education Hearing Officer; and</li> <li>• The timelines for appealing a due process decision to state or federal court.</li> </ul> <p>In compliance with the <i>Code of Virginia</i>, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation.</p> <p>To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted.</p> <p>To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited.</p> <p>To ensure the effective and efficient operation of the due process system, the following provisions were added or modified:</p> <ul style="list-style-type: none"> <li>• The request for a hearing must be made in writing to VDOE, with a copy of the request delivered contemporaneously by the requesting party to the other</li> </ul>

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			<p>party;</p> <ul style="list-style-type: none"> <li>• If a request for a due process hearing is received solely by VDOE, VDOE will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required;</li> <li>• Requirements for the duration of the Special Education Hearing Officer’s authority were added;</li> <li>• All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied;</li> <li>• A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE;</li> <li>• The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer’s responsibility to determine the scope of the conference, to document, if applicable, the reasons for not conducting a pre-hearing conference, and the pre-hearing determinations;</li> <li>• The Special Education Hearing Officer has the discretion to permit either party to raise an issue during the hearing which was not included in the notice by the moving party, depending on the circumstances. (Federal requirements limited this option only to those issues raised by the LEA.);</li> <li>• A Special Education Hearing Officer may not require parties to submit briefs as a condition of rendering a decision, but the Special Education Hearing Officer may permit such a submission on the parties’ request;</li> <li>• The required elements of a due process decision were modified;</li> <li>• A Special Education Hearing Officer must issue a ruling in writing on any party’s motion to quash or modify a subpoena, with a copy to all parties and VDOE;</li> <li>• The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions;</li> <li>• VDOE must ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that the area(s) have been corrected;</li> <li>• The hearing officer has the discretion to hear disputes arising under IDEA and Section 504 as part of the same hearing process, if both are raised in the due process notice;</li> <li>• Findings of fact and decisions must be provided in writing to</li> </ul>

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			<p>the parties and their attorneys, and not just to the attorneys, as previously required; and</p> <ul style="list-style-type: none"> <li>• The provisions regarding implementation plans were modified to require an implementation plan only for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or withdrawal of the due process request.</li> </ul> <p>To provide clarity:</p> <ul style="list-style-type: none"> <li>• Several provisions were collapsed, including the deletion of the provisions, which previously appeared at I.3.-I.5. were deleted;</li> <li>• Language was clarified regarding the role of the Supreme Court of Virginia versus the role of VDOE in the administration of the impartial special education due process system, including that VDOE uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration;</li> <li>• Inserted the requirement that even if the applicable appeal period has expired, the record of the hearing and the findings of fact and decision must be provided to the parent(s) at no cost;</li> <li>• Indicated that the resolution period is part of, and not separate from, the expedited due process hearing timeline;</li> <li>• Required that parties may enter into a confidentiality agreement as part of their resolution agreement;</li> <li>• Outlined that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Provisions regarding the certification of hearing officers were inserted based on guidance from the Office of the Attorney General.</li> </ul>
78 Repealed	200 Complaint resolution procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known;</li> <li>• A complaint must address an action that occurred not more than one year prior to the date the complaint is received, and can no longer include complaint allegations for a longer period of time, even if the violation is continuing;</li> <li>• The complaint must be simultaneously filed with VDOE and the LEA;</li> <li>• VDOE's complaint notification to the LEA must include notice that the LEA has the opportunity to propose a</li> </ul>

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			<p>resolution, and the parties have the opportunity to engage voluntarily in mediation;</p> <ul style="list-style-type: none"> <li>• VDOE must conduct an investigation which includes a complete review of all relevant documentation; and</li> <li>• The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation.</li> </ul> <p>To ensure compliance with the new federal requirements regarding sufficiency of the complaint, a provision was added outlining VDOE's procedure if a complaint is insufficient.</p> <p>The requirement that VDOE send written notification of its receipt of a complaint to "other appropriate [VDOE] personnel" was deleted.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• The LEA's responsibility to respond after receiving notification of a complaint was added;</li> <li>• VDOE's procedure if a complaint is filed by an individual other than the child's parent(s) or their legal counsel;</li> <li>• VDOE will notify the parties in writing if the timeline for the complaint is extended; and</li> <li>• Parties to a complaint may appeal the complaint findings within 30 calendar days of the issuance of a decision, in accordance with procedures established by VDOE.</li> </ul> <p>For clarity, current provisions 8 VAC 20-80-78 D. through G. were reordered to mirror the complaint process, and provision 8 VAC 20-80-78 F. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p> <p>Given other modifications in the section, the language previously located in 8 VAC 20-80-78 C.3.a. and C.3.b. was deleted.</p>
80 Repealed	220 Surrogate parent procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> <li>• Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state;</li> <li>• A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary;</li> <li>• A surrogate parent may not be an employee of a LEA; and</li> <li>• A temporary surrogate, who is a staff member of an emergency shelter, transition shelter, independent living program, or street outreach program, may be appointed to an unaccompanied homeless youth, even though the surrogate is employed by an agency involved in the</li> </ul>

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			<p>education or care of the child, if the surrogate otherwise meets the qualifications to be a surrogate parent.</p> <p>To comply with federal requirements, a LEA must appoint a surrogate parent for a child who is a ward of the state, or who is an unaccompanied homeless youth. However, language was inserted to clarify that the appointment of a surrogate in these circumstances, is only required if no parent can be identified, or the parent's whereabouts are unknown.</p> <p>Based on guidance from US DOE, former provision 8 VAC 20-80-80 C 2 c was deleted.</p> <p>To minimize state regulations that exceed the federal requirements:</p> <ul style="list-style-type: none"> <li>• LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed;</li> <li>• The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and</li> <li>• The training requirements previously outlined in 8 VAC 20-80-80 D. 1. b. have been modified to indicate that a surrogate parent must have knowledge and skills to ensure adequate representation of the child. Surrogate parents are no longer required to complete a LEA approved training session prior to representing the child or to attend annual training thereafter.</li> </ul> <p>For clarity, language was revised to note:</p> <ul style="list-style-type: none"> <li>• Any individual meeting the definition of "parent" may allow a relative or private individual to act as a "parent;" and</li> <li>• Each LEA must establish their policies and procedures relative to surrogate parents in accordance with Virginia's special education regulations.</li> </ul>
90 Repealed	230 Local educational agency administration and governance	Repealed	<p>To comply with federal requirements, provisions were added which indicate:</p> <ul style="list-style-type: none"> <li>• A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context;</li> <li>• A timeline for the LEA's participation in a transition planning conference for a student transitioning from Part C to Part B;</li> <li>• New LEA responsibilities regarding migratory children and early intervening services; and</li> <li>• The LEA's responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA's option to coordinate with the NIMAC.</li> </ul> <p>The requirements regarding the LEA's submission of an</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>annual plan were revised to clarify the LEA’s responsibility. Also, in accordance with federal modifications, LEAs are no longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development.</p> <p>The requirements regarding the local advisory committee (LAC) were modified:</p> <ul style="list-style-type: none"> <li>• To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities;</li> <li>• To require that the committee include one teacher with any additional LEA personnel serving only serve as consultants; and</li> <li>• To clarify the role of the LAC, including in the review of the school division’s annual plan.</li> </ul> <p>For clarification, a provision was inserted which outlines a LEA’s responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30<sup>th</sup>.</p>
100 Repealed	240 Eligibility for funding	Repealed	In compliance with federal requirements, LEAs are no longer required to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.
110 Repealed	250 State funds for local school divisions	Repealed	<p>To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment.</p> <p>To ensure compliance with the <i>Code of Virginia</i>, provisions were expanded that outline VDOE’s obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children’s home.</p> <p>The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education.</p> <p>The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Superintendent of Public Instruction or designee with greater flexibility.</p>
120	260	Repealed	To comply with federal requirements:



Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Repealed	Federal funds		<ul style="list-style-type: none"> <li>• Provisions were added which outline the LEA's responsibilities regarding the following: Excess costs; Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities;</li> <li>• Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and</li> <li>• The language, which previously permitted the awarding of "sliver grants," was deleted.</li> </ul>
130 Repealed	270 Funds to assist state-operated programs	Repealed	For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.
140 Repealed	280 Funding, withholding, and recovery of funds	Repealed	<p>To comply with the <i>Code of Virginia</i>, a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA's state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related services to such children.</p> <p>To comply with federal requirements, if a LEA is notified in writing by VDOE of a decision to withhold funds, the LEA must provide public notice to its jurisdiction regarding the pendency of the action.</p> <p>For clarity, provision 8 VAC 20-80-140 C. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p>
150 Repealed	290 Appeal of administrative decision regarding funding	Repealed	<p>To comply with federal requirements, a LEA must appeal within 20 days of a decision made during an administrative hearing for VDOE to withhold its funding.</p> <p>To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.</p>
152 Repealed	300 Use of public and private insurance	Repealed	To comply with federal requirements, the section was modified to indicate that like with private insurance, if a LEA is seeking to access a child's public benefits or insurance to provide the child with services required for FAPE, the LEA must obtain informed parental consent each time that access to the child's public benefits or insurance is sought, and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			provide the parent with notice containing specific elements, including that the parent's refusal to allow access does not relieve the LEA of its responsibility to provide FAPE to the child at no cost.
155 Repealed	310 Attorneys' fees	Repealed	To comply with federal requirements, provisions were added which outline who may be awarded reasonable attorneys' fees, and that attorneys' fees may not be awarded relative to a resolution session.
160 Repealed	320 Additional responsibilities for programs with children with disabilities in residence or custody	Repealed	To comply with federal requirements, the requirement for state-operated programs to develop a comprehensive system of personnel development was deleted, and requirements to ensure that personnel are appropriately and adequately prepared and trained, including requirements for paraprofessionals, were added.
190 Repealed	330 Compliance with § 504 of the Rehabilitation Act of 1973, as amended	Repealed	To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints. For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.
190 Repealed	340 Special Education Caseload Staffing Requirements	Repealed	Deleted references to "Severe Disabilities."

## Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

During the development of the proposed regulations, VDOE has made efforts to minimize the number of rules, regulations, and policies to which the local educational agencies are subject, while still ensuring compliance with the IDEA 2004, its federal implementing regulations, and other laws and regulations that impact the provision of special education to students with disabilities in Virginia.

Small businesses will not be impacted by these regulations.

## Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* are not anticipated to have an impact on the institution of the family or on family stability. However, parental involvement continues to be a fundamental component of the special education process.