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Exempt Action: Final Regulation Agency Background Document

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-81
VAC Chapter title(s)	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Exempt Action for 8VAC20-81
Final agency action date	August 27, 2026
Date this document prepared	August 27, 2026

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

On May 8, 2026, the Virginia Department of Education received a letter from the United States Department of Education Office of Special Education and Rehabilitative Services stating that 8VAC20-81-280(C) is in conflict with IDEA Section 613(g) and 34 C.F.R. § 300.227. The use of the term “may” in the administrative code is inconsistent with IDEA’s obligatory use of withheld funds by the State.

8VAC20-81-280(C) will be amended to remove the permissive “may” in the regulatory text and replace it with the mandatory “shall” in order to align with federal requirements.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this action is the May 8, 2026, letter from United States Department of Education Office of Special Education and Rehabilitative Services which highlighted an inconsistency between federal law and the Board's regulations.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On August 27, 2026, the State Board of Education adopted final amendments to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia.