

Virginia Special Education Regulations

1 STATE BOARD OF EDUCATION

2 Title of Regulation: 8 VAC 20-80-10 et seq. Regulations Governing Special Education
3 Programs for Children with Disabilities in Virginia (amending 8 VAC 20-80-10, 8VAC 20-80-
4 30 through 8 VAC 20-80-160 and 8 VAC 20-80-190; adding 8 VAC 20-80-45, 8 VAC 20-80-52,
5 8 VAC 20-80-54, 8 VAC 20-80-56, 8 VAC 20-80-58, 8 VAC 20-80-62, 8VAC 20-80-64,
6 8 VAC 20-80-66, 8 VAC 20-80-68, 8 VAC 20-80-72, 8 VAC 20-80-74, 8VAC 20-80-76,
7 8 VAC 20-80-78, 8 VAC 20-80-152, and 8 VAC 20-80-155; repealing 8 VAC 20-80-20, 8 VAC
8 20-80-170, 8 VAC 20-80-180, and 8 VAC 20-80-200).
9 8 VAC 20-570-10 et seq. Special Education Program Standards (REPEALING).

10 PART I.
11 DEFINITIONS.

12 8 VAC 20-80-10. Definitions.

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

15 “Age of eligibility” means all eligible children with disabilities who have not graduated ~~from a~~
16 ~~secondary school or completed a program approved by the Board of Education and who are~~
17 ~~identified as having autism, deaf blindness, a developmental delay, a hearing impairment which~~
18 ~~may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other~~
19 ~~health impairment, a serious emotional disturbance, a severe and profound disability, a specific~~
20 ~~learning disability, a speech or language impairment, a traumatic brain injury, a visual~~
21 ~~impairment which may include blindness or who have other disabilities as defined by the Board~~
22 ~~of Education, with a standard or advanced studies high school diploma~~ who, because of such
23 ~~impairments~~ disabilities, are in need of special education and related services, and whose second
24 birthday falls on or before September 30, and who have not reached their 22nd birthday on or

Virginia Special Education Regulations

1 before ~~September 30~~ ~~[August 1~~September 30] (two to 21, inclusive) ~~[in accordance with the~~
2 Code of Virginia].

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

6 “Alternate assessment” means ~~[testing assessment]~~ for ~~[students children]~~ with disabilities who
7 cannot participate in the ~~[state-wide state]~~ or ~~division-wide~~ ~~[testing assessment]~~ programs even
8 with appropriate accommodations and modifications.

9 “Assistive technology device” means any item, piece of equipment, or product system, whether
10 acquired commercially off the shelf, modified, or customized, that is used to increase, maintain,
11 or improve the functional capabilities of ~~children~~ a child with ~~disabilities~~ a disability.

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

14 1.The evaluation of the needs of a child with a disability, including a functional evaluation of
15 the child in the child’s customary environment;

16 2.Purchasing, leasing[,] or otherwise providing for the acquisition of assistive technology
17 devices by children with disabilities;

18 3.Selecting, designing, fitting, customizing, adapting, applying, ~~retaining~~ maintaining,
19 repairing, or replacing assistive technology devices;

20 4.Coordinating and using other therapies, interventions, or services with assistive technology
21 devices, such as those associated with existing education and rehabilitation plans and
22 programs;

23 5.Training or technical assistance for a child with a disability or, if appropriate, that child’s
24 family; and

Virginia Special Education Regulations

1 6.Training or technical assistance for professionals (including individuals providing
2 education or rehabilitation services), employers, or other individuals who provide services to
3 employ[;] or are otherwise substantially involved in the major life ~~function~~ functions of
4 ~~children with disabilities~~ that child.

5 “At no cost” means that all specially designed instruction is provided without charge, but does
6 not preclude incidental fees that are normally charged to [nondisabled students without
7 disabilities] or their parent or parents as part of the regular education program.

8 “Audiology” means services provided by a qualified audiologist licensed by the Board of
9 Audiology and Speech-Language Pathology and includes:

- 10 1. Identification of children with hearing loss;
- 11 2.Determination of the range, nature, and degree of hearing loss, including referral for
12 medical or other professional attention for the rehabilitation of hearing;
- 13 3.Provision of habilitative activities, such as language habilitation, auditory training, speech
14 reading (lip-reading), hearing evaluation, and speech [~~conversation~~ conservation];
- 15 4.Creation and administration of programs for prevention of hearing loss;
- 16 5.Counseling and guidance of [~~pupils~~ children], parents[,] and teachers regarding hearing
17 loss; and
- 18 6.Determination of ~~the child’s need~~ children’s needs for group and individual amplification,
19 selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

20 “Autism” means a developmental disability significantly affecting verbal and nonverbal
21 communication and social interaction, generally evident before age three, that adversely affects a
22 child’s educational performance. Other characteristics often associated with autism are
23 engagement in repetitive activities and stereotyped movements, resistance to environmental
24 change or change in daily routines, and unusual responses to sensory experiences. The term does
25 not apply if a child’s educational performance is adversely affected primarily because the child

Virginia Special Education Regulations

1 has an emotional disturbance as defined in this chapter. A child who manifests the characteristics
2 of autism after age three could be diagnosed as having autism if the criteria in this definition are
3 satisfied.

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

7 [“Braille user” means a child who is using or learning to use Braille as either a primary or
8 secondary medium for literacy (reading, writing and printing raised dots that represent letters and
9 numerals).]

10 “Business [~~day~~ days]” means Monday through Friday, 12 months of the year, exclusive of
11 federal and state holidays (unless holidays are specifically included in the designation of
12 business days, as in 8 VAC 20-80-66 B 4 ~~a~~. [b a].)

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

18 “Caseload” means the total number of students assigned to special education personnel.

19 “Change in identification” means a change in the ~~eligibility committee’s~~ determination of the
20 child’s disability by the team that determines eligibility.

21 “Change in placement” means:

22 1. The ~~change in a child’s academic offerings from general to special education and from~~
23 ~~special education to~~ child’s initial placement [in from general education to] special education
24 and related services [from general education];

25 2. The expulsion or long-term suspension of a student with a disability;

Virginia Special Education Regulations

- 1 3.The placement change which results from a change in the identification of a disability;
- 2 4.The change from a public school to a private day, residential[,] or state-operated program;
- 3 from a private day, residential[,] or state-operated program to a public school; or to a
- 4 placement in a separate facility for educational purposes;
- 5 5.Termination of all special education and related services; or
- 6 5.6. Graduation with a standard or advanced studies high school diploma.

7 “Change in placement procedures” means:

- 8 ~~1.Written notice to the parent;~~
- 9 ~~2.IEP committee meeting;~~
- 10 ~~3.Parent consent to change the placement.~~

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

- 12 1.A removal of a student from the student’s current educational placement [is] for more than
- 13 10 consecutive school days; or
- 14 2.The student is subjected to a series of removals that constitute a pattern because they
- 15 cumulate to more than 10 school days in a school year, and because of factors such as:
 - 16 a. The length of each removal;
 - 17 b. The total amount of time the student is removed; or
 - 18 c. ~~the~~ The proximity of the removals to one another.

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

20 “Charter schools” means any school meeting the requirements for charter as set forth in the

21 Code of Virginia.

22 “Child” means any person who shall not have reached his 22nd birthday by ~~September 30~~

23 ~~[August 1September 30]~~ of the current year.

Virginia Special Education Regulations

1 ~~“Children~~ Child with [disabilities a disability]” means ~~those children a child~~ evaluated, in
2 accordance with this chapter, ~~as having and determined, as a result of this evaluation, to have~~
3 autism, deaf-blindness, a developmental delay, a hearing impairment ~~which may include~~
4 including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other
5 health impairment, ~~a serious~~ an emotional disturbance, a severe ~~or profound~~ disability, a specific
6 learning disability, a speech or language impairment, a traumatic brain injury, or a visual
7 impairment ~~which may include~~ including blindness, who ~~because of these impairments, need by~~
8 reason thereof, needs special education and related services. The term “student” may also be
9 used to refer to a child with a disability.

10 [“Child study committee” means a committee that enables school personnel, and nonschool
11 personnel, as appropriate, to meet the needs of individual children who are having difficulty in
12 the educational setting. The committee reviews existing data to make recommendations to meet
13 children’s needs and reviews the results of implementation of the recommendations. The child
14 study committee may refer children for evaluation for special education and related services.]

15 ~~“Comprehensive programs and services” means educational programs and support services~~
16 ~~which are required to provide a free appropriate educational program in the least restrictive~~
17 ~~environment to every child with a disability ages two to 21, inclusive, in each local school~~
18 ~~division or other public agencies responsible for providing educational services to children with~~
19 ~~disabilities.~~

20 “Complaint” means a request that the Virginia Department of Education investigate an alleged
21 violation by a local [school division educational agency] of a right of a parent or [parents of a]
22 child who is eligible or believed to be eligible for special education and related services based on
23 federal and state law and regulations governing special education [or a right of such child]. [A
24 complaint is a statement of some disagreement with procedures or process regarding any matter
25 relative to the identification, evaluation, or educational placement of the child, or the provision
26 of a free appropriate public education.]

Virginia Special Education Regulations

1 “Comprehensive Services Act” (CSA) means the ~~act~~ Comprehensive Services Act for At-Risk
2 Youth and Families (§2.1-745 et seq.)] that ~~established~~ establishes] the collaborative
3 administration and funding system that addresses and funds services for certain at-risk youths
4 and their families.

5 “Consent” means:

6 1.The parent or parents or eligible student has been fully informed of all information relevant
7 to the activity for which consent is sought in ~~his~~ the parent’s, parents’, or eligible student’s
8 native language, or other mode of communication;

9 2.The parent or parents or eligible student understands and agrees, in writing, to the carrying
10 out of the activity for which consent is sought, and the consent describes that activity and
11 lists the records (if any) ~~which~~ that will be released and to whom; and

12 3.The parent or parents or eligible student understands that the granting of consent is
13 voluntary on the part of the parent or parents or eligible student and may be revoked at any
14 time ~~prior to the time limits set forth in 8 VAC 20-80-70.~~

15 “Correctional facility” means any state facility of the Department of Corrections or the
16 Department of Juvenile Justice, any regional or local detention home, or any regional or local
17 jail.

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

20 ~~“Current evaluation” means one that has been completed within 365 calendar days or less.~~

21 ~~“Days” are specified as either “calendar days” or “administrative working days.”~~

22 ~~“Administrative working days” means days exclusive of Saturdays, Sundays, and officially~~
23 ~~designated holidays for all local school division personnel. “Calendar days” means consecutive~~
24 ~~days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school~~
25 ~~division level. Whenever any period of time fixed by this procedure shall expire on a Saturday,~~

Virginia Special Education Regulations

1 ~~Sunday, or school holiday, the period of time for taking such action under this procedure shall be~~
2 ~~extended to the next day not a Saturday, Sunday, or school holiday.~~

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

4 “Deafness” means a hearing impairment that is so severe that the child is impaired in
5 processing linguistic information through hearing, with or without amplification, that adversely
6 affects the child’s educational performance.

7 “Deaf-blindness” means ~~concomitant~~ [having] hearing and visual impairments [occurring] at
8 the same time, the combination of which causes such severe communication and other
9 developmental and educational ~~problems~~ needs that they cannot be accommodated in special
10 education programs solely for ~~deaf or blind~~ children with deafness or children with blindness.

11 ~~“Developmental delay” means a significant delay in one or more of the following areas of~~
12 ~~development for a child below age eight:~~

- 13 1. ~~Cognitive ability;~~
- 14 2. ~~Motor skills;~~
- 15 3. ~~Social/adaptive behavior;~~
- 16 4. ~~Perceptual skills; and~~
- 17 5. ~~Communication skills.~~

18 “Developmental delay” means a disability affecting a child ages two through eight [who]:

- 19 1. [Is Who is] experiencing developmental delays, [as defined by the Virginia Department of
20 Education and] as measured by appropriate diagnostic instruments and procedures, in one or
21 more of the following areas: physical development, cognitive development, communication
22 development, social or emotional development, or adaptive development; and
- 23 2. Who, by reason thereof, needs special education and related services.

Virginia Special Education Regulations

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

3 “Due process hearing” means an [impartial administrative] procedure [used] conducted by an
4 impartial hearing officer to resolve disagreements [over issues related to regarding the
5 identification, evaluation, educational placement and services, and the] provision of a free
6 appropriate public education that arise between a parent or parents and a local [school division
7 educational agency]. [A due process hearing involves the appointment of an impartial hearing
8 officer who conducts the hearing, reviews evidence and determines what is educationally
9 appropriate for the child with a disability.

10 “Early identification and assessment of disabilities in children” means the implementation of a
11 formal plan for identifying a disability as early as possible in a child’s life.

12 [“Education records” means the type of records covered under the definition of “education
13 record” in the regulations implementing the Family Education Rights and Privacy Act (20 USC
14 §§ 1232 g.).]

15 “Emotional disturbance”; ~~see “Serious emotional disturbance.”~~ means a condition exhibiting
16 one or more of the following characteristics over a long period of time and to a marked degree
17 that adversely affects a child’s educational performance:

18 1.An inability to learn that cannot be explained by intellectual, sensory, or health factors;

19 2.An inability to build or maintain satisfactory interpersonal relationships with peers and
20 teachers;

21 3.Inappropriate types of behavior or feelings under normal circumstances;

22 4.A general pervasive mood of unhappiness or depression; or

23 5.A tendency to develop physical symptoms or fears associated with personal or school
24 problems.

Virginia Special Education Regulations

1 The term includes schizophrenia. The term does not apply to children who are socially
2 maladjusted, unless it is determined that they have an emotional disturbance.

3 “Evaluation” means procedures used in accordance with this chapter to determine whether a
4 child has a disability and the nature and extent of the special education and related services that
5 the child needs [as described in 8 VAC 20-80-54 of this chapter]. ~~The term means procedures~~
6 ~~used selectively with an individual child and does not include basic tests administered or~~
7 ~~procedures used with all children in a school, grade, or class.~~

8 “Extended school year services” for the purposes of this chapter means special education and
9 related services that:

10 1. Are provided to a child with a disability:

11 a. Beyond the normal school year [(in the number of days and hours)] of the local
12 educational agency;

13 b. In accordance with the child’s individualized education program;

14 c. At no cost to the parent or parents of the child; and

15 2. Meet [any the] standards established by the Virginia Department of Education.

16 “Federal financial assistance” means any grant, loan, contract or any other arrangement by
17 which the U.S. Department of Education provides or otherwise makes available assistance in the
18 form of funds, services of federal personnel, or real and personal property.

19 “Free appropriate public education” (FAPE) means special education and related services
20 ~~which~~ that:

21 1. Are provided at public expense, under public supervision and direction, and without
22 charge;

23 2. Meet the standards of the Virginia Board of Education;

Virginia Special Education Regulations

1 3. Include preschool, elementary school, middle school or secondary school, ~~or vocational~~
2 education in the state; and

3 4. Are provided in conformity with an individualized education program that meets the
4 requirements of this chapter.

5 ~~FAPE is a statutory term which requires special education and related services to be provided~~
6 ~~in accordance with an individualized education program (IEP).~~

7 “Functional behavioral assessment” means a process [that determines to determine] the
8 underlying cause or functions of a child’s [problem] behavior [that impede the learning of the
9 child with a disability or the learning of the child’s peers].

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

15 “Hearing impairment” means an impairment in hearing, whether permanent or fluctuating, that
16 adversely affects a child’s educational performance but ~~which~~ that is not included under the
17 definition of “deafness” in this section.

18 “Home-based instruction” means services that are delivered in the home setting (or other
19 agreed upon setting) in accordance with the [student’s child’s] individualized education program.

20 “Homebound instruction” means academic instruction provided to students who are confined
21 at home or in a health care facility for periods that would prevent normal school attendance
22 based upon certification of need by a licensed physician or licensed clinical psychologist. For a
23 child with a disability, the IEP must determine the delivery of services, including the number of
24 hours of services.

Virginia Special Education Regulations

1 “Home instruction” means instruction of a child or children by a parent or parents, guardian or
2 other person having control or charge of such child or children as an alternative to attendance in
3 a public or private school, in accordance with the provisions of the Code of Virginia. This
4 instruction may also be termed home schooling.

5 “Home tutoring” means instruction by a tutor or teacher [of with] qualifications prescribed by
6 the Virginia Board of Education and approved by the division superintendent, as an alternative to
7 attendance in a public or private school [in accordance with the provisions of the Code of
8 Virginia]. [This tutoring is often used as an alternative form of home schooling but is not home
9 instruction as defined in the code.]

10 “Impartial hearing officer” means a person, selected from a list maintained by the Office of the
11 Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing. A
12 ~~hearing may not be conducted:~~

13 1. ~~By a person employed by a public agency involved with the care or education of the child;~~
14 ~~or~~

15 2. ~~By a person having a personal or professional interest which would conflict with his~~
16 ~~objectivity in the hearing.~~

17 ~~A hearing officer is not an employee of the local education agency (LEA) or state education~~
18 ~~agency (SEA) solely because he is paid by the agency to serve as a hearing officer.~~

19 “Implementation plan” means the plan developed by the ~~LEA~~ local school division ~~educational~~
20 agency designed to operationalize the decision of the hearing officer, ~~the reviewing officer,~~ or
21 agreement between the parties. The implementation plan shall include the name and position of
22 the individual in the local ~~school division~~ educational agency charged with the implementation
23 of the decision (case manager) as well as the date for effecting such plan.

24 “Independent educational evaluation” (IEE) means an evaluation conducted by qualified a
25 qualified examiner or examiners who are not employed by the public local educational agency

Virginia Special Education Regulations

1 responsible for the education of the child in question. ~~Whenever an independent evaluation is~~
2 ~~made at public expense, the criteria governing the evaluation, including the location of the~~
3 ~~evaluation and the qualifications of the examiners, must be the same as the criteria the public~~
4 ~~agency uses when it initiates an evaluation.~~

5 ~~“Individualized education program” (IEP) means a written statement for each child with a~~
6 ~~disability developed in any meeting by a representative of the LEA who shall be qualified to~~
7 ~~provide, or supervise the provision of, specially designed instruction to meet the unique needs of~~
8 ~~children with disabilities, the teacher, the parents of such child, and whenever appropriate, such~~
9 ~~child. An IEP shall include:~~

- 10 1. ~~A statement of the present levels of educational performance;~~
 - 11 a. ~~The statement should accurately describe the effect of the child’s disability on the child’s~~
12 ~~performance in any area of education that is affected including academic areas and~~
13 ~~nonacademic areas.~~
 - 14 b. ~~The statement should be written in objective measurable terms, to the extent possible.~~
15 ~~Test scores, if appropriate, should be self explanatory or an explanation should be~~
16 ~~included.~~
 - 17 c. ~~There should be a direct relationship between the present level of performance and the~~
18 ~~other components of the IEP.~~
- 19 2. ~~A statement of annual goals, including short term instructional objectives;~~
- 20 3. ~~A statement of the specific education and related services to be provided, and the extent to~~
21 ~~which such child will be able to participate in regular educational programs;~~
- 22 4. ~~The projected date for initiation and anticipated duration of the services (month, day, and~~
23 ~~year);~~
- 24 5. ~~Appropriate objective criteria and evaluation procedures and schedules for determining, at~~
25 ~~least on an annual basis, whether instructional objectives are being achieved;~~

Virginia Special Education Regulations

1 ~~6. Necessary information regarding the Literacy Testing Program (LTP) (see 8 VAC~~
2 ~~20-80-70 B 5 f);~~

3 ~~7. A statement of the needed transition services for each student beginning no later than age~~
4 ~~16 (and at a younger age, if determined appropriate) including, if appropriate, a statement of~~
5 ~~each public agency's and each participating agency's responsibilities or linkages, or both,~~
6 ~~before the student leaves the school setting. The transition services must address each of the~~
7 ~~following areas: (i) the development of employment and other post school adult living~~
8 ~~objectives; (ii) instruction; (iii) community experiences; and (iv) if appropriate, acquisition of~~
9 ~~daily living skills and functional vocational evaluation, unless the IEP committee determines~~
10 ~~that services are not needed in one or more of those areas. The IEP committee must then~~
11 ~~include in the IEP a statement to that effect and the basis for that determination in the IEP;~~
12 ~~and~~

13 ~~8. A statement as to whether or not the student will participate in Family Life Education.~~

14 “Individualized education program” (IEP) means a written statement [of services] for a child
15 with a disability that is developed, reviewed[,] and revised in a team meeting in accordance with
16 this chapter. [The IEP specifies the individual educational needs of the child and what special
17 education and related services are necessary to meet the needs.]

18 “Individualized family service plan” (IFSP) under Part C means a written plan for providing
19 early intervention services to an infant or toddler with a disability eligible under Part C and [to]
20 the child's family.

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

24 1. Has delayed functioning;

25 2. Manifests atypical development or behavior;

Virginia Special Education Regulations

1 3. Has behavioral disorders that interfere with acquisition of developmental skills; or

2 4. Has a diagnosed physical or mental condition that has a high probability of resulting in
3 delay, even though no current delay exists.

4 “Informed [parental] consent”; see “Consent.”

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

8 ~~“In service training” means training other than that received by an individual in a full time~~
9 ~~program which leads to a degree.~~

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

13 “Interpreting personnel” means ~~personnel~~ individuals providing educational interpreting
14 services ~~for children with hearing impairments, deafness or both meeting who meet the~~
15 qualifications set forth under ~~the section on Qualified Professionals~~ 8 VAC 20-80-45 E.

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

18 “Learning disability”[:] see “Specific learning disability.”

19 ~~“Local educational agency” (LEA) means the local school division or other public agencies~~
20 ~~responsible for providing educational services to children with disabilities.~~

21 “Least restrictive environment” (LRE) means that to the maximum extent appropriate, children
22 with disabilities, including children in public or private institutions or other care facilities, are
23 educated with children who are not disabled, and that special classes, separate schooling or other
24 removal of children with disabilities from the regular educational environment occurs only when

Virginia Special Education Regulations

1 the nature or severity of the disability is such that education in regular classes with the use of
2 supplementary aids and services cannot be achieved satisfactorily.

3 “Level I services” means the provision of special education and related services to [students
4 children with disabilities] for less than 50% of their instructional school day (excluding
5 intermission for meals). [Time in The time that a child receives] special education [services] is
6 calculated on the basis of special education services described in the individualized education
7 program, rather than the location of services.

8 “Level II services” means the provision of special education and related services to students
9 children with disabilities for 50% or more of the instructional school day (excluding intermission
10 for meals). [Time in The time that a child receives] special education [services] is calculated on
11 the basis of special education services described in the individualized education program, rather
12 than the location of services.

13 “Local educational agency” means a local school division governed by a local school board or ,
14 a state-operated program that is funded and administered by the Commonwealth of Virginia[, or
15 the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf,
16 Blind and Multi-Disabled at Hampton].

17 [“Manifestation determination review” means a process to review all relevant information and
18 the relationship between the child’s disability and the behavior subject to the disciplinary action.]

19 “Medical services” means services provided by a licensed physician or nurse practitioner to
20 determine a child’s medically related disability ~~which~~ that results in the child’s need for special
21 education and related services.

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

Virginia Special Education Regulations

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

6 “Native language” ~~as defined by § 3283(a)(2) of the Bilingual Education Act, (20 USC~~
7 ~~§ 3283), when if~~ used with reference to ~~a person~~ an individual of limited English-speaking ability
8 proficiency, means the language normally used by that ~~person~~ individual, or, in the case of a
9 child, the language normally used by the parent or parents of the child, ~~except~~ [1. In in] all
10 direct contact with a child (including evaluation of the child), ~~communication would be in the~~
11 language normally used by the child ~~and not that of the parents, if there is a difference between~~
12 ~~the two~~ in the home or learning environment. [2.] ~~If a person is deaf or blind~~ For an individual
13 with deafness or blindness, or has for an individual with no written language, the mode of
14 communication ~~would be~~ is that normally used by the ~~person~~ individual (such as sign language,
15 Braille, or oral communication).

16 “Nonacademic services and extracurricular services” may include counseling services,
17 athletics, transportation, health services, recreational activities, special interest groups or clubs
18 sponsored by the ~~public~~ local educational agency, referrals to agencies that provide assistance to
19 individuals with disabilities, and employment of students, including both employment by the
20 ~~public~~ local educational agency and assistance in making outside employment available.

21 ~~“Notification”~~ “Notice” means written statements in English ~~and~~ or in the primary language of
22 the ~~parent’s~~ parent’s home of the parent or parents, and or [if the language or other mode of
23 communication of the parent or parents is not a written language,] oral communication in the
24 primary language of the ~~parent’s~~ parent’s home of the parent or parents. If [a person an individual] is deaf
25 or blind, or has no written language, the mode of communication would be that normally used by
26 the [person individual] (such as sign language, Braille, or oral communication).

Virginia Special Education Regulations

1 “Occupational therapy” means services provided by a qualified occupational therapist or
2 services provided under the direction or supervision of a qualified occupational therapist and
3 includes:

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

9 “Orientation and mobility services” means services provided to blind or visually impaired
10 [students children] by qualified personnel to enable those [students children] to attain systematic
11 orientation to and safe movement within their environments in school, home, and community;
12 and includes teaching [students children] the following, as appropriate:

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

20 “Orthopedic impairment” means a severe orthopedic impairment that adversely affects a
21 child’s educational performance. The term includes impairments caused by congenital anomaly
22 (e.g., club foot, absence of some member,—~~ete.~~), impairments caused by disease (e.g.,
23 poliomyelitis, bone tuberculosis,—~~ete.~~), and impairments from other causes (e.g., cerebral palsy,
24 amputations, and fractures or burns that cause ~~contracture~~ contractures).

Virginia Special Education Regulations

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

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

10 “Parent [or parents]” means a natural or adoptive parent [or parents] of a child, a guardian, a
11 person acting as in the place of a parent ~~of a child~~, (such as a grandparent or stepparent with
12 whom the child lives, or a person who is legally responsible for the child’s welfare), a foster
13 parent under the circumstances described below[.] or a surrogate parent who has been appointed
14 pursuant to 8VAC 20-80-80 in accordance with this chapter. ~~The term does not include the state~~
15 if the child is a ward of the state. The term means either parent, unless the LEA local educational
16 agency has been provided with evidence that there is a legally binding instrument ~~or~~, [a] state
17 law[.] or court order ~~to the contrary~~. ~~The term also includes persons acting in the place of a~~
18 parent such as a grandparent or stepparent with whom the child lives. ~~A child 18 years or older~~
19 may assert any rights under this chapter in his own name. that has terminated the parent’s or
20 parents’ rights. A foster parent may also serve as a parent:

- 21 1. If the natural parent’s or parents’ authority to make educational decisions on the child’s
22 behalf has been extinguished under §16.1-283, §16.1-277.01 or §16.1-277.02 of the Code
23 of Virginia or a comparable law in another state; ~~and~~
- 24 2. The child is in permanent foster care pursuant to §63.1-206.1 of the Code of Virginia or
25 comparable law in another state ;; and

Virginia Special Education Regulations

1 3. The foster parent or parents (i) [~~has~~ have] an ongoing, long-term parental relationship with
2 the child; (ii) [~~is~~ are] willing to make the educational decisions required of the parent or
3 parents under this chapter; and (iii) [~~has~~ have] no interest that would conflict with the
4 interests of the child.

5 The term “parent or parents” does not include local or state agencies or their agents,
6 including[;] local departments of social services ~~or their agents~~ if the child is in the custody of a
7 local department of social services such an agency.

8 “Parent counseling and training” means (i) assisting parents in understanding the special needs
9 of their child[;] ~~and~~, (ii) providing parents with information about child development; and (iii)
10 helping parents to acquire the necessary skills that will allow them to support the implementation
11 of their child’s IEP or IFSP.

12 “Participating agency” means ~~any agency or institution which collects, maintains, or uses~~
13 ~~personally identifiable information or from which information is obtained~~ a state or local agency
14 (including a Comprehensive Services Act team), other than the local educational agency
15 responsible for a student’s education, that is financially and legally responsible for providing
16 transition services to the student.

17 “Physical education” means the development of:

- 18 1. Physical and motor fitness;
- 19 2. Fundamental motor skills and patterns; and
- 20 3. Skills in aquatics, dance, and individual and group games and sports (including intramural
21 and lifetime sports).

22 The term includes special physical education, ~~adaptive~~ adapted physical education, movement
23 education, and motor development.

24 “Physical therapy” means services provided by a qualified physical therapist or under the
25 direction or supervision of a qualified physical therapist upon medical referral and direction.

Virginia Special Education Regulations

1 “Private school children with disabilities” means children with disabilities enrolled by their
2 parent or parents in private schools [rather than placed in private schools by local educational
3 agencies , other than children with disabilities who are placed in a private school by a local
4 school division or Comprehensive Services Act team in accordance with 8 VAC 20-80-66 A-].

5 “Program” means the special education and related services, including accommodations,
6 modifications, supplementary aids and services, as determined by a child’s individualized
7 [educational education] program.

8 “Psychological services” ~~includes~~ means those services provided by a qualified psychologist or
9 ~~services provided~~ under the direction or supervision of a qualified psychologist, including:

- 10 1. Administering psychological and educational tests, and other assessment procedures;
- 11 2. Interpreting assessment results;
- 12 3. Obtaining, integrating, and interpreting information about child behavior and conditions
13 relating to learning;
- 14 4. Consulting with other staff members in planning school programs to meet the special
15 needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
16 ~~and~~
- 17 5. Planning and managing a program of psychological services, including psychological
18 counseling for children and parents.; and
- 19 6. Assisting in developing positive behavioral intervention strategies.

20 [~~“Public agency” means the state educational agency (SEA), local educational agencies,~~
21 ~~intermediate educational units, and any other public agencies that are responsible for providing~~
22 ~~education to children with disabilities.]~~

Virginia Special Education Regulations

1 “Public expense” means that the ~~LEA~~ local educational agency either pays for the full cost of
2 the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost
3 to the parent or parents.

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

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

12 “Qualified personnel” means ~~that a person has met the state board educational agency~~
13 ~~approved or recognized certification, licensing, registration or other comparable requirements~~
14 which personnel who have met Virginia Department of Education approved or recognized
15 certification, licensing, registration, or other comparable requirements that apply to the area in
16 which he the individual is providing special education or related services. In addition, the
17 professional must meet other state agency requirements for such professional service[;] and
18 Virginia licensure requirements as designated by ~~state~~ Virginia law or regulations.

19 ~~“Recipient” means any state or other political subdivision, any public or private agency,~~
20 ~~institution, organization, or other entity, or any person to which public financial assistance is~~
21 ~~extended directly or through another recipient.~~

22 “Recreation” includes:

- 23 1. Assessment of leisure function;
- 24 2. Therapeutic recreation services;
- 25 3. Recreation program in schools and community agencies; and

Virginia Special Education Regulations

1 4. ~~License~~ Leisure education.

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

3 “Rehabilitation counseling services” means services provided by qualified personnel in
4 individual or group sessions that focus specifically on career development, employment
5 preparation, achieving independence, and integration in the workplace and community of a
6 student with a disability. The term also includes vocational rehabilitation services provided to
7 students with disabilities by vocational rehabilitation programs funded under the Rehabilitation
8 Act of 1973 (29 USC §§ 701 et seq.), as amended.

9 “Related services” means transportation and such developmental, corrective, and other
10 supportive services as are required to assist a child with a disability to benefit from special
11 education[;] and includes speech-language pathology and audiology services; interpreting and
12 transliterating; psychological services; physical and occupational therapy; recreation, including
13 therapeutic recreation; early identification and assessment of disabilities in children; counseling
14 services, including rehabilitation and psychological counseling; ~~and~~ orientation and mobility
15 services; medical services for diagnostic or evaluation purposes. ~~The term also includes;~~ school
16 health services[;] social work services in schools[;] and parent counseling and training. [The list
17 of related services is not exhaustive and may include other developmental, corrective, or
18 supportive services (such as artistic and cultural programs, and art, music and dance therapy), if
19 they are required to assist a child with a disability to benefit from special education.] Senate
20 Report No. 94-168 provides a definition of “related services,” making clear that all such related
21 services may not be required for each individual child and that such term includes early
22 identification and assessment of disabilities and the provision of services to minimize the effects
23 of such conditions. ~~The list of related services is not exhaustive and may include other~~
24 ~~developmental, corrective, or supportive services (such as artistic and cultural programs, and art,~~
25 ~~music and dance therapy), if they are required to assist a child with a disability to benefit from~~
26 ~~special education.~~

Virginia Special Education Regulations

1 Each related service defined under this part may include appropriate administrative and
2 supervisory activities that are necessary for program planning, management, and evaluation.

3 ~~["School based committee" means a committee that enables school personnel, and nonschool
4 personnel, as appropriate, to meet the needs of individual children who are having difficulty in
5 the educational setting. The committee reviews existing data and informal measures to make
6 recommendations to meet children's needs and review the results of the recommendations.]~~

7 "School day" means any day, including a partial day, that children are in attendance at school
8 for instructional purposes. The term has the same meaning for all children in school, including
9 children with and without disabilities.

10 "School health services" means services provided by a qualified school nurse or other qualified
11 person.

12 "Screening" means those processes [~~which that~~] are used routinely with all children to [~~help
13 determine educational strengths and weaknesses~~ identify previously unrecognized needs and that
14 may result in a referral for special education and related services or other referral or
15 intervention].

16 "Section 504" means that section of the Rehabilitation Act of 1973, as amended (29 USC
17 §§ 701 et seq.), which is designed to eliminate discrimination on the basis of ~~handicap~~ disability
18 in any program or activity receiving federal financial assistance.

19 ~~"Serious emotional disturbance" means a condition exhibiting one or more of the following
20 characteristics over a long period of time and to a marked degree that adversely affects a child's
21 educational performance:~~

- 22 1. ~~An inability to learn which cannot be explained by intellectual, sensory, or health factors;~~
- 23 2. ~~An inability to build or maintain satisfactory interpersonal relationships with peers and
24 teachers;~~
- 25 3. ~~Inappropriate types of behavior or feelings under normal circumstances;~~

Virginia Special Education Regulations

1 4. ~~A general pervasive mood of unhappiness or depression; or~~

2 5. ~~A tendency to develop physical symptoms or fears associated with personal or school~~
3 ~~problems.~~

4 ~~The term includes children who are schizophrenic, but does not include children who are~~
5 ~~socially maladjusted unless it is determined that they are seriously emotionally disturbed.~~

6 “Severe ~~and~~ profound disability” means [~~individuals who a primary disability that~~]:

7 1. ~~Have~~ [~~Primary disabilities that severely impair~~ Severely impairs] cognitive abilities,
8 adaptive skills, and life functioning;

9 2. ~~May have~~ [~~Associated~~ May have associated] severe behavior problems;

10 3. ~~May have~~ [~~The~~ Has the] high probability of additional physical or sensory disabilities; and
11 4.

12 4. ~~that require~~ [~~That requires~~ Requires] significantly more educational resources than are
13 provided for the children with mild and moderate disabilities in special education programs.

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

16 1. Preparing a social or developmental history on a child with a disability;

17 2. Group and individual counseling with the child and family;

18 3. Working in partnership with parents and others on those problems in a child’s living
19 situation (home, school, and community) that affect the child’s adjustment in school; ~~and~~

20 4. Mobilizing school and community resources to enable the child to learn as effectively as
21 possible in ~~his~~ the child’s educational program; and

22 5. Assisting in developing positive behavioral intervention strategies for the child.

Virginia Special Education Regulations

1 “Special education” means specially designed instruction, at no cost to the parent or parents, to
2 meet the unique needs of a child with a disability, including instruction conducted in a
3 classroom, in the home, in hospitals, ~~and in~~ in institutions, and in other settings and instruction in
4 physical education. The term includes each of the following if it meets the requirements of the
5 definition of special education:

6 1. ~~The term includes Speech-language pathology or any other related service, if the service~~
7 ~~consists of specially designed instruction, at no cost to the parents, to meet the unique needs~~
8 ~~of a child with a disability , and is considered “special education” rather than a “related~~
9 ~~service” under state standards. services;~~

10 2. ~~The term also includes Vocational education if it consists of specially designed instruction~~
11 ~~at no cost to the parent, to meet the unique needs of a child with a disability; and~~

12 3. Travel training.

13 3. The terms in this definition are defined as follows:

14 a. ~~“At no cost” means that all specially designed instruction is provided without charge, but~~
15 ~~does not preclude incidental fees which are normally charged to nondisabled students or~~
16 ~~their parents as a part of the regular education program.~~

17 b. ~~“Physical education” means the development of (i) physical and motor fitness; (ii)~~
18 ~~fundamental motor skills and patterns; and (iii) skills in aquatics, dance and individual and~~
19 ~~group games and sports (including intramural and lifetime sports). The term includes~~
20 ~~special physical education, adaptive physical education, movement education, and motor~~
21 ~~development.~~

22 c. ~~“Vocational education” means organized educational programs that are directly related~~
23 ~~to the preparation of individuals for paid or unpaid employment, or for additional~~
24 ~~preparation for a career requiring other than a baccalaureate or advanced degree.~~

Virginia Special Education Regulations

1 4. ~~The definition of “special education” is a particularly important one. While a child may be~~
2 ~~considered to have a disability under other laws, he does not have a disability under this~~
3 ~~chapter unless he needs special education. If a child does not need special education, there~~
4 ~~can be no related services since the provision of a related service must be necessary for a~~
5 ~~child to benefit from special education.~~

6 “Specially-designed instruction” means adapting, as appropriate to the needs of an eligible
7 child under this chapter, the content, methodology, or delivery of instruction:

8 1. To address the unique needs of the child that result from the child’s disability; and

9 2. To ensure access of the child to the general curriculum, so that the child can meet the
10 educational standards that apply to all children within the jurisdiction of the local educational
11 agency [that apply to all children].

12 “Specific learning disability” means a disorder in one or more of the basic psychological
13 processes involved in understanding or in using language, spoken or written, ~~which~~ that may
14 manifest itself in an imperfect ability to listen, think, speak, read, write, spell or [to] do
15 mathematical calculations. The term includes such conditions as perceptual disabilities, brain
16 injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not
17 include ~~children who have~~ learning problems ~~which~~ that are primarily the result of visual,
18 hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of
19 environmental, cultural, or economic disadvantage.

20 “Speech or language impairment” means a communication disorder, such as stuttering,
21 impaired articulation, a language impairment, or a voice impairment, ~~which~~ that adversely
22 affects a child’s educational performance.

23 “Speech-language pathology services” includes means the following services:

24 1. Identification of children with speech or language ~~disorders~~ impairments;

25 2. Diagnosis and appraisal of specific speech or language ~~disorders~~ impairments;

Virginia Special Education Regulations

1 3. Referral for medical or other professional attention necessary for the habilitation of speech
2 or language ~~disorders~~ impairments;

3 4. ~~Provisions~~ Provision of speech and language services for the habilitation or prevention of
4 communicative ~~disorders~~ impairments; and

5 5. Counseling and guidance of parents, children, and teachers regarding speech and language
6 ~~disorders~~ impairments.

7 ["State assessment program" means the state assessment program in Virginia under the
8 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) that is the component of
9 the state assessment system used for accountability.]

10 "State educational agency" (SEA) means the Virginia Department of Education.

11 ~~"Support services" means implementing the comprehensive system of personnel development;~~
12 ~~recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia;~~
13 ~~and recruitment and training of surrogate parents; and public information and parent training~~
14 ~~activities relating to a free appropriate public education for children with disabilities.~~

15 "State-operated programs" means programs which provide educational services to children and
16 youth who reside in facilities according to the admissions policies and procedures of those
17 facilities that are the responsibility of state boards, agencies, [and or] institutions. [The
18 educational services provided in a state operated program must be comparable to services that a
19 child or youth would receive in a local school division. This does not include the Virginia School
20 for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-
21 Disabled at Hampton.]

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

Virginia Special Education Regulations

1 ~~“Surrogate parent” means a person appointed in accordance with procedures set forth in this~~
2 ~~chapter to provide ensure that children who are in legal or physical custody of the state, or whose~~
3 ~~parents are not known or are unavailable, with are afforded~~ the protection of procedural
4 safeguards ~~[and the provision of a free appropriate public education].~~

5 ~~“Testing” means individual evaluation procedures (formal testing and assessment) to determine~~
6 ~~initial or continued eligibility for special education services.~~

7 ~~“Transition from Part C [(Early Intervention Program for Infants and Toddlers with~~
8 ~~Disabilities)] services” means the steps identified in the Individualized Family Services Plan~~
9 ~~(IFSP) to be taken to support the transition of the child to:~~

10 ~~1. Early childhood special education to the extent that those services are appropriate; or~~

11 ~~2. Other services that may be available, if appropriate.”~~

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

17 ~~1. Be based on the individual student’s needs, taking into account the student’s preferences~~
18 ~~and interests; and~~

19 ~~2. Include:~~

20 ~~a. The development of employment and other post-school adult living objectives;~~

21 ~~b. Instruction;~~

22 ~~c. Community experiences; and~~

23 ~~d. If appropriate, acquisition of daily living skills and functional vocational evaluation.~~

Virginia Special Education Regulations

1 Transition services for students with disabilities may be special education, if they are provided
2 as specially designed instruction, or related services, if they are required to assist a student with a
3 disability to benefit from special education. ~~The list of activities above is not intended to be~~
4 ~~exhaustive.~~

5 “Transportation” includes:

- 6 1. Travel to and from school and between schools;
- 7 2. Travel in and around school ~~building~~ buildings; and
- 8 3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to
9 provide special transportation for a child with a disability.

10 “Traumatic brain injury” means an acquired injury to the brain caused by an external physical
11 force, resulting in total or partial functional disability or psychosocial impairment, or both, that
12 adversely affects a child’s educational performance. The term applies to open or closed head
13 injuries resulting in impairments in one or more areas, such as cognition; language; memory;
14 attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual[,] and
15 motor abilities; psychosocial behavior; physical functions; information processing; and speech.
16 The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries
17 induced by birth trauma.

18 “Travel training” means providing instruction, as appropriate, to children with significant
19 cognitive disabilities, and any other children with disabilities who require this instruction, to
20 enable them to:

- 21 1. Develop an awareness of the environment in which they live; and
- 22 2. Learn the skills necessary to move effectively and safely from place to place within that
23 environment (e.g., in school, in the home, at work, and in the community).

24 [“Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf,
25 Blind, and Multi-Disabled at Hampton” means the Virginia schools authorized by the Virginia

Virginia Special Education Regulations

1 Board of Education and administered and supervised by the Superintendent of Public Instruction
2 “Virginia schools”.]

3 “Visual impairment including blindness” means an impairment in vision that, even with
4 correction, adversely affects a child’s educational performance. The term includes both partial
5 sight and blindness.

6 “Vocational education,” for the purposes of special education, means organized educational
7 programs ~~or instruction in a sequence or aggregation of occupational competencies~~ that are
8 directly related to the preparation of individuals for paid or unpaid employment ~~in current or~~
9 ~~emerging occupations~~ or for additional preparation for a career requiring other than a
10 baccalaureate or advanced degree. ~~These programs must include competency based applied~~
11 ~~learning that contributes to an individual’s academic knowledge, higher order reasoning, and~~
12 ~~problem solving skills, work attitudes, general employability skills, and the occupation specific~~
13 ~~skills necessary for economic independence as a productive and contributing member of society.~~
14 ~~This term also includes applied technology education.~~

15 ~~“Ward of the state” means all parental rights and responsibilities for the care and custody of a~~
16 ~~child have been terminated by court order or applicable law, and the child has been placed in the~~
17 ~~care and custody of the state.~~

PART II.

RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION.

20 8 VAC 20-80-20. ~~Right to a free appropriate public education.~~ (Repealed.)

21 ~~The Virginia Department of Education shall ensure that all persons with disabilities from two~~
22 ~~to 21, inclusive, residing in the Commonwealth of Virginia are identified, evaluated, and have~~
23 ~~available a free and appropriate public education. The provisions set forth in this chapter shall~~
24 ~~apply to all public and private schools and agencies in the Commonwealth which provide special~~
25 ~~education and related services to children with disabilities.~~

Virginia Special Education Regulations

1 8 VAC 20-80-30. Functions of the Virginia Department of Education.

2 ~~In keeping with its responsibilities in this regard,~~ The Virginia Department of Education (SEA
3 state educational agency) shall perform the functions which follow:

4 1. Ensure that all children with disabilities, aged two ~~through to~~ 21, inclusive, residing in
5 Virginia, have a right to a free appropriate public education[,] including, but not limited to[,]
6 children with disabilities who:

7 a. ~~Children with disabilities who are~~ Are] migrant ~~and who are homeless~~];

8 [b. Are homeless;]

9 ~~b. c. Children with disabilities who have~~ Have] been suspended or expelled from school,
10 in accordance with this chapter; ~~and,~~

11 ~~e. d. Children with disabilities who are~~ Are] incarcerated in a state, regional, or local adult
12 or juvenile correctional facility, with the exception of those provisions identified in 8 VAC
13 20-80-62[: H;]

14 [e. Are in special education and related services, even though they are] advancing from
15 grade to grade;

16 f. Are in state-operated programs; or

17 g. Are in public charter schools in accordance with the Code of Virginia.]

18 [2. Except as provided in 8 VAC 20-80-56 D, ensure that each local school division develops
19 an IEP for each child with a disability served by that local school division and that an IEP is
20 developed for each child with a disability placed in a private school by a local school division
21 or Comprehensive Services Act team.]

22 4. ~~[23].~~ Review and submit to the Virginia Board of Education for approval ~~the Annual~~
23 Special Education Plan/Report and Funding Applications a plan for the provision of special
24 education [and related services] from each local school division or other public agencies

Virginia Special Education Regulations

1 educational agency responsible for providing educational services to children with
2 disabilities.

3 ~~2. [34].~~ Prepare and submit for public hearing[;:] ~~for~~ receive comment from the public,
4 members of the State Special Education Advisory Committee state special education
5 advisory committee, and private special education schools[;:] ~~and for approval by to place on~~
6 file with the U.S. Department of Education, ~~the State Plan for Education of Children with~~
7 Disabilities final policies and procedures to ensure that the conditions of state eligibility for
8 funding under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) are
9 met. Such plan shall contain assurances of and procedures as prescribed by federal law.

10 ~~3. [45].~~ Develop procedures for implementing state and federal laws and regulations
11 pertaining to the education of children with disabilities.

12 ~~4. [56].~~ Assist ~~LEAs~~ local educational agencies and other participating state agencies in the
13 implementation of state and federal laws and regulations pertaining to the education of
14 children with disabilities by providing technical assistance and consultative services.

15 ~~5. [67].~~ Review and evaluate compliance of ~~LEAs~~ local educational agencies with state and
16 federal laws and regulations pertaining to the education of children with disabilities and
17 require corrective actions where needed.

18 a. Administer a special education due process hearing system that provides procedures for
19 [the] training of hearing officers, requests for a hearing, appointment of hearing officers,
20 [the] management and monitoring of hearings, and [the] administration of the hearing
21 system.

22 b. Maintain and operate a complaint system that provides for the investigation and issuance
23 of findings regarding [alleged] violations of the educational rights of parents or children
24 with disabilities. Allegations may be made by public or private agencies, individuals or
25 organizations.

Virginia Special Education Regulations

1 6. ~~[78].~~ Review and evaluate compliance of ~~approved~~ private nonsectarian special education
2 schools ~~for children with disabilities with state and federal laws and regulations pertaining to~~
3 ~~the education of children with disabilities~~ that are licensed or have a certificate to operate [in
4 order] to ensure that each child with a disability placed in the school by a local [educational
5 agency school division] or [CSA Comprehensive Services Act] team is provided special
6 education and related services at no cost to the parent or parents in conformance with an IEP
7 that meets the requirements of this chapter and meets the standards that apply to education
8 provided by local educational agencies.

9 [9. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at
10 Staunton and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton to
11 ensure that each child with a disability placed in the school by a local school division is
12 provided special education and related services at no cost to the parent or parents in
13 accordance with an IEP that meets the requirements of this chapter and meets the standards
14 that apply to education provided by local educational agencies.]

15 7. ~~[8.10.]~~ Establish and maintain a state [special education] advisory committee composed of
16 ~~[persons individuals]~~ individuals involved in or concerned with the education of children with
17 disabilities.

18 a. [Membership.] The membership ~~must include, but need not be limited to, at least one~~
19 ~~representative from each of the groups as follows~~ shall consist of individuals appointed by
20 the [Superintendent of Public Instruction Board of Education,] who are involved in, or
21 concerned with, the education of children with disabilities. The majority shall be
22 individuals with disabilities or parents of children with disabilities. Membership shall
23 include [one or more of] the following:

24 (1) Parents of children with disabilities;

25 ~~a.~~ (2) Individuals with disabilities;

26 ~~b.~~ (3) Teachers of children with disabilities;

Virginia Special Education Regulations

- 1 ~~e. Parents of children with disabilities;~~
- 2 (4) Representatives of institutions of higher education that prepare special education and
- 3 related services personnel;
- 4 ~~d. (5) State and local education officials;~~
- 5 ~~e. Special education program~~ (6) Administrators of programs for children with
- 6 disabilities;
- 7 ~~f. Public and private institutions of higher education; and~~
- 8 ~~g. Advocacy groups.~~
- 9 (7) Representatives of other state agencies involved in the financing or delivery of related
- 10 services to children with disabilities;
- 11 (8) Representatives of private schools and public charter schools;
- 12 (9) At least one representative of a vocational, community, or business organization
- 13 concerned with the provision of transition services to children with disabilities; and
- 14 (10) [A representative Representatives] from Virginia's juvenile and adult correctional
- 15 educational agency.
- 16 b. Duties. The state special education advisory committee shall:
- 17 (1) Advise the Virginia Department of Education and the Virginia Board of Education of
- 18 unmet needs within the state in the education of children with disabilities;
- 19 (2) Comment publicly on any rules or regulations proposed by the Virginia Board of
- 20 Education regarding the education of children with disabilities;
- 21 (3) Advise the Virginia Department of Education in developing evaluations and reporting
- 22 on data to the U.S. Secretary of Education under the Individuals with Disabilities
- 23 Education Act (20 USC §§ 1400 et seq.);

Virginia Special Education Regulations

1 (4) Advise the Virginia Department of Education in developing corrective action plans to
2 address findings identified in federal monitoring reports under the Individuals with
3 Disabilities Education Act (20 USC §§ 1400 et seq.);

4 (5) Advise the Virginia Department of Education in developing and implementing
5 policies relating to the coordination of services for children with disabilities; ~~and~~

6 (6) Advise [the Virginia Department of Education] on eligible children with disabilities in
7 state, regional, or local adult or juvenile correctional facilities[; and

8 (7) Review the policies and procedures for the provision of special education and related
9 services under 8 VAC 20-80-90 B 1 submitted by state-operated programs, the Virginia
10 School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind
11 and Multi-Disabled at Hampton.]

12 c. Procedures.

13 (1) The state special education advisory committee shall meet as often as necessary to
14 conduct its business.

15 (2) By July 1 of each year, the state special education advisory committee shall submit an
16 annual report of committee activities and suggestions to the Virginia Board of Education.
17 The report must be made available to the public in a manner consistent with other public
18 reporting requirements of Part B of the Individuals with Disabilities Education Act (20
19 USC §§ 1400 et seq.).

20 (3) Official minutes must be kept on all committee meetings and must be made available
21 to the public on request.

22 (4) All meetings and agenda items must be publicly announced prior to the meeting, and
23 meetings must be open to the public.

24 (5) Interpreters and other necessary services shall be provided for advisory committee
25 members or participants.

Virginia Special Education Regulations

1 (6) The advisory committee shall serve without compensation, but the Virginia
2 Department of Education shall reimburse the committee for reasonable and necessary
3 expenses for attending meetings and performing duties.

4 8. ~~[911].~~ Provide at least annually to the ~~State Special Education Advisory Committee~~ state
5 special education advisory committee all findings and decisions of due process hearings, with
6 all personally identifiable information deleted, and in addition, a summary of the complaint
7 findings.

8 ~~[4012].~~ Establish goals for the performance of children with disabilities that [will promote
9 the purposes of Individuals with Disabilities Education Act as stated in CFR § 300.1 and] are
10 consistent, to the maximum extent appropriate, with other goals and standards [as established
11 by the Virginia Board of Education and the Code of Virginia] for all children [established by
12 the Virginia Board of Education and the Code of Virginia, as follows].

13 a. Establish performance indicators to assess progress toward achieving those goals that
14 address, at a minimum, dropout rates, graduation rates, and performance of students
15 children with disabilities on assessments[; and]

16 b. Every two years, report to the public and the United States Secretary of Education on
17 progress [of the state and children with disabilities in the state] toward meeting the goals.

18 9. ~~[4113].~~ Develop and implement a comprehensive personnel development plan which
19 focuses on pre service and in service educational needs is designed to ensure an adequate
20 supply of qualified special education, regular education, and related services personnel,
21 including paraprofessionals, and meets the requirements for a state improvement plan
22 relating to personnel development.

23 ~~[4214].~~ Demonstrate that children with disabilities are included in statewide state and local
24 assessment programs, with accommodations and modifications, or in an alternate assessment.
25 Report to the public, with the same frequency and in the same details detail as reports on
26 assessments are issued for children without disabilities, the number of children [with

Virginia Special Education Regulations

1 disabilities] participating in regular and alternate assessments, and performance results on
2 regular and alternate assessments, including both aggregated and disaggregated data.

3 ~~10. Develop [1315].~~ Establish procedures for disseminating significant information derived
4 from research, demonstration programs[,] and projects involving children with disabilities.

5 ~~11. [1416].~~ Secure agreements from with state agency heads regarding appropriate roles and
6 responsibilities for the identification, evaluation, placement, and delivery of or payment for
7 educational and related services in order to ensure [that] a free appropriate public education
8 is provided to all children with disabilities. The agreements shall address financial
9 responsibility for each nonpublic ~~education~~ educational agency for the provision of services.

10 The agreements shall include procedures for resolving interagency disputes and for securing
11 reimbursement from other agencies, including procedures under which local educational
12 agencies may initiate proceedings.

13 ~~12. [1517].~~ Disburse the appropriated funds for the education of children with disabilities in
14 the Commonwealth to ~~LEAs~~ local school divisions and state-operated programs which are in
15 compliance with state and federal laws and regulations pertaining to the education of children
16 with disabilities, including submission of revised policies and procedures for provision of
17 special education and related services.

18 ~~13. Establish procedures to [16. Ensure that the placements of children with disabilities by~~
19 ~~other public agencies are in compliance with state and federal laws and regulations pertaining~~
20 ~~to the education of children with disabilities.]~~

21 ~~14. Establish reasonable tuition costs and other reasonable charges for each approved private~~
22 ~~nonsectarian school for children with disabilities based on the special education and services~~
23 ~~provided. Charges for other services, in addition to room and board, will be established in~~
24 ~~cooperation with other state agencies having similar responsibilities. All such costs and~~
25 ~~charges shall be established in accordance with the process determined by the~~
26 ~~Interdepartmental Committee on Rate Setting for Children's Facilities.~~

Virginia Special Education Regulations

1 ~~15.~~ [17.18. Ensure that a practical method is developed and implemented to determine which
2 ~~children are currently receiving needed special education and related services.]~~ Report and
3 certify ~~[annually to the United States Department of Education]~~ to the appropriate federal
4 ~~agency, no later than February 1 of each year, [to the United States Department of Education]~~
5 the number of children with disabilities in local ~~[school divisions and state operated~~
6 ~~programs educational agencies]~~ who are receiving special education and related services ~~on~~
7 December 1.

8 ~~16. Prepare an annual report which summarizes special education and related services~~
9 ~~provided children with disabilities.~~

10 ~~17. Review, investigate, and act on any allegations of substance which may be made by~~
11 ~~public or private agencies, individuals, or organizations of actions taken by any public~~
12 ~~agency that are contrary to the requirements of laws and regulations affecting the education~~
13 ~~of children with disabilities.~~

14 ~~[18.19.]~~ Establish procedures designed to fully inform parents and children with disabilities
15 of educational rights and due process procedures.

16 ~~[19.20.]~~ Provide private special education schools that are licensed or have a certificate to
17 operate with copies of all state regulations and standards relating to the education of children
18 with disabilities and revisions ~~of this chapter and standards~~ as they occur.

19 ~~20. Afford private schools to which a public agency has referred or placed a child with a~~
20 ~~disability the opportunity to participate in the development and revision of regulations and~~
21 ~~standards which apply to them.~~

22 ~~[20.21.]~~ Establish and implement a mediation process in accordance with 8-VAC 20-80-74,
23 the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.), including
24 providing for the cost of mediators and support personnel.

Virginia Special Education Regulations

1 [21.22.] Ensure that requirements regarding use of public or private insurance to pay for
2 services required under this chapter are met.

3 [22.23.] If the Virginia Department of Education provides direct services to children with
4 disabilities, it shall comply with the state and federal requirements as if it is a local
5 educational agency and use federal funds under Part B of the Individuals with Disabilities
6 Education Act (20 USC §§ 1400 et seq.) to provide services.

7 a. The Virginia Department of Education shall use payments that would otherwise have
8 been available to a local [school division or state operated program educational agency] to
9 provide special education services directly to children with disabilities residing in the [area
10 served by that] local school division[;] or [for whom that served by a] state-operated
11 program [is responsible], [if the Virginia Department of Education determines the local
12 school division or state operated program meets criteria specified by in accordance with the
13 conditions of § 1413 (h) of] the Individuals with Disabilities Education Act (20 USC
14 §§ 1400 et seq.).

15 b. The Virginia Department of Education may provide special education and related
16 services in the manner and at the location it considers appropriate, consistent with least
17 restrictive environment requirements.

18 [23.24.] Ensure that children [participating who participate] in early intervention programs
19 services assisted under Part C[;] of the Individuals with Disabilities Education Act[;] (20
20 USC §§ 1400 et seq.) and who will participate in preschool programs assisted under Part B[;]
21 of the Individuals with Disabilities Education Act[;] (20 USC §§ 1400 et seq.) experience a
22 smooth and effective transition to early childhood special education programs in a manner
23 consistent with the Virginia [Part C] lead agency's [Part C] early intervention policies and
24 procedures, as follows:

25 a. For those children who at age two (on or before September 30) are found eligible for Part
26 B early childhood special education programs, [an IEP or, if consistent with Part B IEP

Virginia Special Education Regulations

1 ~~requirements, an individualized family service plan is IEP's are] developed and [is]~~
2 ~~implemented for [the child; those children; and]~~

3 b. The local educational agency will participate in transition planning conferences
4 arranged by the designated local Part C early intervention agency.

5 [25. Ensure the protection of the confidentiality of any personally identifiable information
6 collected, maintained, or used under Part B of the Individuals with Disabilities Education Act
7 (20 USC §§ 1400 et seq.) This shall include notice to fully inform parents about the
8 confidentiality of information and policies and procedures that are used in the event that
9 parents refuse to provide consent for disclosure of education records.]

10 PART III.

11 RESPONSIBILITIES OF ~~LEAS~~ LOCAL SCHOOL DIVISIONS AND STATE AGENCIES[-]
12 OPERATED PROGRAMS.

13 8 VAC 20-80-40. ~~Applicability of requirements.~~ Responsibility of local school divisions and
14 state-operated programs.

15 A. The requirements set forth in this ~~part~~ chapter are applicable to local school divisions and
16 state ~~[agencies -operated programs]~~ providing education and related services for children with
17 disabilities and are developed in accordance with state and federal laws and regulations.

18 B. Each local school division shall ensure that all children with disabilities, aged two [through
19 to] 21, inclusive, residing in that school division have a right to a free appropriate public
20 education[-. This shall include, including]:

21 1. Children with disabilities who are migrant [or who are homeless];

22 [2. Children with disabilities who are homeless;

23 3. Children with disabilities who are in need special education and related services, even
24 though they are advancing from grade to grade;]

Virginia Special Education Regulations

1 [2.4.] Children with disabilities who are served in [public a] charter schools [authorized by in
2 accordance with] the Code of Virginia;

3 [3.5.] Children with disabilities who have been suspended or expelled from school, in
4 accordance with this chapter;

5 [4.6.] Children with disabilities who are incarcerated [for 10 or more days] in a regional[7] or
6 local jail [in its jurisdiction]; with the exception of those provisions identified in 8 VAC 20-
7 80-62;

8 [5.7.] Children with disabilities who are residents of the school division and who are on
9 house arrest, as ordered by a court of competent jurisdiction; [services shall be provided at a
10 mutually agreed upon location];

11 [6.8.] Children with disabilities who are [in a foster home or child caring institution in the
12 school division's jurisdiction. in foster care and residents of Virginia but not residents of the
13 school division under the following conditions:

14 a. The child has been placed in foster care or other custodial care within the geographical
15 boundaries of the school division, placed by a Virginia agency, whether state or local, that
16 is authorized by the Code of Virginia to place children;

17 b. The child has been placed, not solely for school purposes, in a child-caring institution or
18 group home licensed under the provisions of Chapter 10 (§63.1-195 et seq.) of Title 63.1
19 which is located within the geographical boundaries of the school division; and

20 c.] However, if the child's individualized education program prescribes placement in a
21 private day or residential special education facility, the responsibility for a free and
22 appropriate public education shall transfer to the local school division [in the same
23 jurisdiction as the local social services agency that is providing foster care services to the
24 child that is the participant in the Community Policy and Management Team of the locality

Virginia Special Education Regulations

1 that has responsibility for the child under the Comprehensive Services Act (§2.1-745 et
2 seq.).]

3 [7.9.] Children with disabilities who are placed in a private residential placement by a
4 Comprehensive Services Act team. The local school division that is part of the
5 Comprehensive [Service Services] Act team that places the child in the private residential
6 placement for non-educational reasons shall [be responsible for ensuring ensure, to the extent
7 reasonable,] a free appropriate public education;

8 [8. ~~Children with disabilities who are placed in a nursing home with a pediatric unit, subject~~
9 ~~to the provisions of the Virginia Department of Medical Assistance Services, whose~~
10 ~~residence remains in the local school division; and~~

11 9. ~~Students with disabilities age 18 or older whose parents have legal guardianship and who~~
12 ~~are residents of the local school division.~~

13 10. Children with disabilities who are placed for non-educational reasons and are not
14 physically present in the school division, but whose parent or parents continue to reside in the
15 local school division in accordance with §22.1-3 of the Code of Virginia.

16 a. For the purpose of determining residency, the residence of the child with a disability
17 shall be determined as follows:

18 (1) If placed for non-educational reasons in a nursing facility, a long stay hospital, or an
19 intermediate care facility for the mentally retarded, under funding from the Virginia
20 Department of Medical Assistance Services, the child is a resident of the division where
21 the parent or parents reside, unless the child is in a state-operated program;

22 (2) If placed for non-educational reasons in a group home by a community services
23 board, a court service unit, or a court of competent jurisdiction, the child is a resident of
24 the division where the parent or parents reside, unless the child is in a state-operated
25 program;

Virginia Special Education Regulations

1 (3) If aged 18 or older, placed for non-educational reasons in a nursing facility, a long
2 stay hospital, or an intermediate care facility for the mentally retarded under funding
3 from the Virginia Department of Medical Assistance Services, and who has been
4 declared legally incompetent or legally incapacitated by a court of competent jurisdiction
5 and for whom the court has appointed a guardian to make decisions, the adult child is a
6 resident of the division where the guardian resides, unless the adult child with a disability
7 is in a state-operated program; and

8 (4) If aged 18 or older, placed for non-educational reasons in a group home by a
9 community services board and who has been declared legally incompetent or legally
10 incapacitated by a court of competent jurisdiction and for whom the court has appointed a
11 guardian to make decisions, the adult child is a resident of the division where the
12 guardian resides, unless the adult child with a disability is in a state-operated program.

13 b. If there is a dispute between local school divisions regarding the parent's, parents', or
14 legal guardian's residence, the local school division of the parent's, parents', or legal
15 guardian's last known place of residence is responsible until such dispute is resolved or the
16 parent's, parents', or legal guardian's residence is established in another local school
17 division.

18 11. Children with disabilities, aged 18 or older, who have not been declared legally
19 incompetent or legally incapacitated by a court of competent jurisdiction and for whom the
20 court has not appointed a guardian to make decisions and who reside in the school division,
21 unless the adult child is in a state-operated program. The adult child's residence shall be the
22 fixed home to which the adult child will return following [a] temporary absence and at which
23 the adult child intends to stay. No adult child shall have more than one residence at a time.

24 12. Children with disabilities, aged 18 or older, who have been declared incompetent or
25 legally incapacitated by a court of competent jurisdiction and for whom the court has
26 appointed a guardian to make decisions and guardian resides in the school division, unless

Virginia Special Education Regulations

1 the adult child with a disability is in a state-operated program. The adult child's residence
2 shall be the fixed home to which the adult child will return following temporary [a] absence
3 and at which the adult child with a disability intends to stay. No adult child with a disability
4 shall have more than one residence at a time.]

5 C. Each state-operated program shall ensure that all children with disabilities[,] aged two
6 [through to] 21, inclusive, in that institution have the right to a free appropriate public education.

7 8 VAC 20-80-45. Special education staffing requirements.

8 A. [~~School-age~~ School-age] programs. The following specifies the staffing patterns for special
9 education services for school age (five [through to] 21, inclusive) children. [~~Local-educational~~
10 agencies and private special education schools may offer an alternative staffing pattern which
11 ensures the requirements of this chapter are met. Any alternative staffing plan shall be submitted
12 to the Virginia Department of Education for approval. An alternative staffing plan that reduces
13 the number of staff positions will not be acceptable.]

14 1. Grouping. When children with disabilities are removed from the general education
15 classroom for special education and related services, they may [~~be grouped~~ receive services]
16 with children with the same disability or with children with different disabilities. Each child
17 must receive [~~the majority of~~] special education services from special education personnel
18 assigned in accordance with the requirements of Figure A in this section. [Each child may
19 receive some special education and services from personnel not endorsed in the child's
20 disability area or areas, but holding a special education endorsement as specified in Figure
21 A.]

22 2. Personnel assignment.

23 a. Personnel assignment requirements are [~~prescribed~~ listed] in Figure A.

Virginia Special Education Regulations

1 b. Personnel not meeting the assignment requirements of Figure A may provide some
2 services to children with disabilities if the children receive the majority of special
3 education services from personnel assigned in accordance with Figure A.

4 c. Personnel providing services to [~~children~~ a child] who [~~have~~ has] more than one
5 disability [~~do not need~~ are not required] to be endorsed in all areas of [~~a~~ the] child's
6 disabilities[~~, but shall be endorsed in one area of a child's disabilities.~~ The child shall
7 receive some services for each disability from appropriately endorsed personnel.]

8 3. [~~Caseloads~~ Caseload] standards.

9 a. The maximum special education caseloads, with and without paraprofessionals, are [~~as~~
10 set and] funded in the Virginia Appropriation Act [~~and presented in~~ . See] Appendix A [for
11 the funded caseloads. Special education services for children with visual impairment shall
12 be established, maintained, and operated jointly by the local school board and the Virginia
13 Department for the Visually Handicapped.]

14 b. [~~A teacher's caseload shall include all children to whom the teacher provides services.~~
15 ~~Children receiving special education services from more than one special education teacher~~
16 ~~must be counted on the caseload of each teacher.~~ If children with disabilities in a single
17 building receive academic content area instruction from multiple special education
18 teachers, the teachers' caseloads shall be determined by using a building average.

19 (1) A building average is computed by dividing the total weights (found in Appendix A)
20 for all children served in this fashion by the number of special education teachers
21 providing services. Any itinerant teacher shall be counted according to the amount of
22 time the teacher spends in the school. Subsection A 3 d applies for any teacher assigned
23 to administrative duties or to providing services to children who do not have disabilities.

24 (2) The building average shall not exceed 20 points if services are provided to students
25 receiving level I services and to children receiving level II services. The building

Virginia Special Education Regulations

1 average shall not exceed 24 points if services are provided only to children receiving
2 level I services.

3 (3) No more than 14 children shall be assigned to a single class period if there are similar
4 achievement levels and one subject area and level are taught. No more than 10 students
5 shall be assigned to a single class period when there are varying achievement levels and
6 more than one subject area and level are taught.]

7 c. Special education personnel may also be assigned to serve children who are not eligible
8 for special education and related services under this chapter, as long as special education
9 personnel hold appropriate [~~licensure~~ licenses] and [~~endorsement~~ endorsements] for such
10 [~~assignment~~ assignments].

11 d. When special education personnel are assigned to provide services for children who do
12 not have a disability under this chapter [or are assigned to administrative duties], a
13 reduction in the caseload specified in the Virginia Appropriation Act must be made in
14 proportion to the percentage of school time on such assignment.

15 [(1)] This provision does not apply when special education and related services are
16 provided in a [~~regular~~ general education] class, based on the goals and objectives of the
17 IEP of at least one [~~student~~ child] in that classroom, and children without disabilities
18 incidentally benefit from such services.

19 [(2) When special education personnel provide services in a general education classroom,
20 based on the IEP goals and objectives of at least one child in that classroom, the special
21 education caseloads do not include children with disabilities who incidentally benefit
22 from such services.]

23 B. Programs for early childhood special education.

24 1. Children of preschool ages (two through five, inclusive) who are eligible for special
25 education receive early childhood special education. The amount of services is determined by

Virginia Special Education Regulations

1 the child's individualized education program team. [There is no state minimum or maximum
2 number of hours of services for preschool aged students with disabilities. Any alternative
3 staffing plan shall be submitted to the Virginia Department of Education for approval. An
4 alternative staffing plan that reduces the number of staff positions will not be acceptable. A
5 full five and one-half hour day shall be provided if determined appropriate by the IEP team.]

6 2. Staffing requirements.

7 a. Children receiving early childhood special education services may be grouped receive
8 services together with other [preschool aged preschool-aged] children with the same or
9 with different disabilities.

10 b. Personnel assignment standards are [prescribed listed] in Figure B.

11 c. The maximum special education caseloads, with and without paraprofessionals, are [as
12 set and] funded in the Virginia Appropriation Act [and as presented in . See] Appendix A
13 [for the funded caseloads. Special education services for children with visual impairment
14 shall be established, maintained, and operated jointly by the local school board and the
15 Virginia Department for the Visually Handicapped].

16 C. Staffing for education programs in regional and local jails. [Persons Special education
17 personnel] with any special education endorsement, except early childhood special education
18 [and speech-language impairment], may provide instructional services to eligible students with
19 disabilities incarcerated in a regional or local jail.

20 D. Alternative special education staffing plan. [Local school divisions and private special
21 education schools may offer an alternative staffing pattern that ensures the requirements of this
22 chapter are met. An alternative staffing plan that reduces the number of staff positions will not
23 be acceptable.] If the local school division or private special education school director [wishes
24 plans] to implement a different staffing pattern from those specified in this chapter, the local
25 school division superintendent, or private special education school director shall [submit receive
26 approval to implement] an alternative staffing plan [to from] the Virginia Department of

Virginia Special Education Regulations

1 Education [in accordance with the procedures established by the Virginia Department of
 2 Education. Information on alternative staffing plan requests and approvals shall be available to
 3 teachers and parents].

4 ~~[1. Alternative staffing plans are considered on an individual teacher basis according to the~~
 5 ~~description of the caseload. Plans shall be submitted on a form authorized by the Virginia~~
 6 ~~Department of Education. Approval from the Virginia Department of Education is required~~
 7 ~~to implement the plan. The teachers affected by the plan must be informed by the local~~
 8 ~~school division or private special education school that a plan has been submitted, advised of~~
 9 ~~its content, and of its approval status. Approval from the Virginia Department of Education~~
 10 ~~must be secured if there are any modifications to the original plan.~~

11 ~~2. In the event that a change in an IEP requires submission of an alternative staffing plan, a~~
 12 ~~request for a plan must be submitted to the Virginia Department of Education within 30 days~~
 13 ~~of the IEP meeting. The IEP shall be implemented while awaiting approval from the Virginia~~
 14 ~~Department of Education.~~

15 ~~3. Requests for continuation of an alternative staffing plan approved in the previous school~~
 16 ~~year shall be submitted before August 1.]~~

17
 18 Figure A. Special education [teacher personnel] assignment requirements for [school-age school-
 19 aged] children [(:] ages five-through to] 21, inclusive[),] in local school divisions.

<u>Disability</u> <u>Category</u>	<u>Endorsement</u>
<u>Autism</u>	<u>any special education</u> <u>endorsement, as</u> <u>appropriate to student</u> <u>needs</u>

Virginia Special Education Regulations

<u>[Deaf-blind Deaf-blindness]</u>	<u>severe disabilities K-12 or any other special education endorsement, as appropriate to student needs</u>
<u>Developmental Delay: age 5-[9 8]</u>	<u>any special education endorsement, as appropriate to student needs</u>
<u>Emotional Disturbance</u>	<u>emotional disturbance K-12</u>
<u>Hearing Impairment/Deaf</u>	<u>hearing impairments preK-12</u>
<u>Learning Disabilities</u>	<u>learning disabilities K-12</u>
<u>Mental Retardation</u>	<u>mental retardation K-12</u>
<u>Multiple Disabilities</u>	<u>severe disabilities or any other special education endorsement, as appropriate to student needs</u>
<u>Orthopedic Impairment</u>	<u>any special education endorsement, as appropriate to student needs</u>

Virginia Special Education Regulations

<u>Other Health Impairment</u>	<u>any special education endorsement, as appropriate to student needs</u>
<u>Severe Disabilities</u>	<u>severe disabilities K-12</u>
<u>Speech or Language Impairment</u>	<u>speech or language disorders preK-12</u>
<u>Traumatic Brain Injury</u>	<u>any special education endorsement, as appropriate to student needs</u>
<u>Visual Impairment</u>	<u>visual impairments preK-12</u>

1

2

3 Figure B. Special education [teacher personnel] assignment requirements for preschool children

4 (,) ages two [through to] five, inclusive(,) in local school divisions.

<u>Disability Category</u>	<u>Endorsement</u>
<u>Developmental Delay: ages 2 - 5</u>	<u>early childhood special education</u>
<u>Hearing Impairment/Deaf</u>	<u>hearing impairments preK-12</u>
<u>Speech or language impairment</u>	<u>speech or language disorders preK-12</u>

Virginia Special Education Regulations

[Vision Visual] <u>Impairment</u>	<u>visual impairments preK-12</u>
<u>All other disability categories</u>	<u>early childhood special education</u>

1 E. Educational interpreting services.

2 1. The qualification requirements for personnel providing interpreting services are as follows:

3 a. Personnel providing educational interpreting services for children using sign language
 4 shall have a Virginia Quality Assurance Screening (VQAS) Level III, any Registry of
 5 Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation), or any
 6 other state or national certification recognized by the Virginia Department for the Deaf and
 7 Hard of Hearing as equivalent to or exceeding the VQAS Level III[.]

8 b. Personnel providing educational interpreting services for children using cued speech or
 9 cued language shall have a Virginia Quality Assurance Screening Level III for ~~[Cued~~
 10 ~~Speech~~ cued speech /cued language] or hold a Transliteration Skills Certificate from the
 11 Testing, Evaluation and Certification Unit (TEC Unit).

12 c. Personnel providing educational interpreting services for children requiring oral
 13 interpreting shall ~~[have met~~ meet] minimum requirements for competency on the Virginia
 14 Quality Assurance Screening's written assessment of the Code of Ethics.

15 2. ~~[An individual providing~~ Personnel who provide] interpreting services for children ~~[using~~
 16 who use] sign language or cued speech or cued language [and] who ~~[does do]~~ not hold the
 17 required qualifications may be employed in accordance with all of the following criteria:

18 a. ~~[The individual must~~ Personnel shall] have a Virginia Quality Assurance Screening
 19 Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard
 20 of Hearing, upon hiring date in any local educational agency in Virginia;

Virginia Special Education Regulations

1 b. ~~Each individual must~~ Personnel shall] achieve the qualification requirements by the
2 third anniversary ~~[date]~~ of ~~[their]~~ hiring ~~[date]~~ in any local educational agency in Virginia;
3 and

4 c. The local educational agency shall annually inform the Virginia Department of
5 Education of: (i) the person's name, social security number, and hiring date; (ii) the
6 person's progress toward meeting the qualification requirements; and (iii) the person's
7 development plan.

8 3. Waiver of qualification ~~[for interpreters]~~ requirements ~~[for personnel providing~~
9 interpreting services].

10 a. Conditions for requesting a waiver.

11 (1) The local educational agency superintendent or director of a private special education
12 school that is licensed or has a certificate to operate shall request a waiver of the
13 qualification requirements for ~~[any individual]~~ personnel] who ~~[does do]~~ not meet the
14 qualification requirements for providing interpreting services. The request shall include a
15 statement certifying that the local educational agency or private special education school
16 has recruited ~~[for persons]~~ personnel] who meet the qualification requirements [and has
17 not had three or more applicants who hold at least a VQAS Level I].

18 (2) A waiver may be provided for ~~[individuals]~~ personnel] who do not hold ~~at least a~~
19 Virginia Quality Assurance Screening (VQAS) Level I upon date of hire the
20 qualifications in subsection 2a[,] and who hold interpreting credentials from another state
21 or who have registered to take the VQAS[,] and [who] take the assessment as scheduled.
22 The waiver shall be in place only until the [local educational agency receives the notice
23 of] equivalency of the ~~[out of state is received by the local educational agency out-of-~~
24 state credential] or ~~[until]~~ of] the [attainment of the] VQAS level ~~or equivalency~~
25 determination [is received]. The waiver shall not be extended if a VQAS Level I, or
26 higher, is not obtained.

Virginia Special Education Regulations

1 (3) A waiver may be provided for one year for individuals who have not attained the
2 qualification requirements [by the third anniversary of their hiring date in any local
3 educational agency in Virginia in subsection 2b] and who hold a VQAS Level II. This
4 waiver may be provided for [a second one additional] year if the individual continues to
5 hold a VQAS Level II and has shown improvement in percentage scores.

6 b. Timeline for requesting a waiver. A request to waive the [educational interpreter]
7 qualification requirements [is to shall] be submitted to the Virginia Department of
8 Education within 30 days of the person's initial or continuing assignment to provide
9 interpreting services, using a form authorized by the Virginia Department of Education.

10 8 VAC 20-80-50. ~~Identification, evaluation, and eligibility~~ Child find.

11 A. ~~Target ages[,] and eligibility. Each annual special education plan/report and funding~~
12 ~~application shall include procedures which ensure that all children residing within the~~
13 ~~jurisdiction of an LEA, birth to age 21, inclusive, who may have disabilities, and who may need~~
14 ~~special education and related services are identified, located, and evaluated. The plan also shall~~
15 ~~include a practical method for determining children who are receiving needed special education~~
16 ~~and related services and those who are not receiving such services.~~

17 1. Each local school division shall maintain an active and continuing child find program
18 designed to identify, locate and evaluate those children residing in the jurisdiction who are
19 birth to age 21, inclusive, who are in need of special education and related services[. The
20 requirements apply to, including children who]:

21 [1. Children who are a. Are] highly mobile, such as migrant and homeless children:

22 [2. Children who are b. Attend] private schools[, including children who are home-
23 instructed or home-tutored];

Virginia Special Education Regulations

1 ~~[3. Children who are~~ c. Are] suspected of being ~~[a child~~ children] with ~~[a disability~~
2 ~~disabilities under this chapter]~~ and in need of special education, even though they are
3 ~~advancing from grade to grade; and~~

4 ~~[4. Children~~ d. Are] under age 18 who are suspected of having a disability ~~[and in]~~ who
5 ~~need of~~ special education and related services and ~~[who]~~ are incarcerated in a regional or
6 ~~local jail [in its jurisdiction]~~ for 10 or more days.

7 [2. Each local school division shall coordinate child find activities for infants and toddlers
8 (birth to] two, inclusive) with the Part C local interagency coordinating council.

9 3. Each local school division shall locate, identify and evaluate all private school children
10 with disabilities, including religious -school children and home-instructed, or home-tutored
11 children residing in the jurisdiction of the local school division, in accordance with 8 VAC
12 20-80-66. The activities undertaken to carry out this responsibility for private school
13 children with disabilities must be comparable to the activities undertaken for children with
14 disabilities in public schools. Each local school division shall consult with appropriate
15 representatives of private school children with disabilities on how to carry out the child find
16 and evaluation activities.]

17 B. ~~Child find~~ Public awareness.

18 1. Each local school division shall, at least annually, conduct a public awareness campaign
19 to:

20 a. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free
21 appropriate public education and the availability of special education programs and
22 services;

23 b. Generate referrals; and

24 c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for
25 [services to begin] early [intervention].

Virginia Special Education Regulations

1 2. Procedures for informing the community shall show evidence of the use of a variety of
2 materials and media[,] and shall:

3 a. Provide for personal contacts with community groups, public and private agencies[,] and
4 organizations; and

5 b. Provide information in the person's native language or primary mode of communication.

6 3. ~~[There shall be~~ The local school division shall show] evidence of involvement of parents
7 and community members in the required child find and community awareness campaign.

8 ~~4. Each local school division shall maintain an active and continuing child find program~~
9 ~~designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in~~
10 ~~need of special education and related services. Written procedures shall be established for~~
11 ~~collecting, reviewing and maintaining such data.~~

12 ~~5. All children ages two to 21, inclusive, not enrolled in school and who are suspected of~~
13 ~~having a disability shall be referred to the division superintendent, or designee, who shall~~
14 ~~initiate the process of determining eligibility for special education services.~~

15 ~~6. Where such children are determined to be eligible for special education services, school~~
16 ~~divisions are required to offer appropriate programs and placements consistent with each~~
17 ~~child's IEP from ages two to 21 inclusive.~~

18 C. Screening.

19 ~~1. Each local school division shall establish and maintain screening procedures to assure the~~
20 ~~identification of children with disabilities residing within its jurisdiction and requiring special~~
21 ~~education. All procedural safeguards shall be maintained during the screening process. These~~
22 ~~include the following:~~

23 a. ~~Written notice when appropriate;~~

24 b. ~~Confidentiality; and~~

Virginia Special Education Regulations

1 ~~e. Maintenance of student's scholastic record.~~

2 ~~2. 1.~~ 1. The screening process for all children enrolled in the school division a [public school
3 local school division] in Virginia, including transfers from out of state, is as follows:

4 a. All children ~~[(through grade three)],~~ within 60 ~~administrative working~~ business days of
5 initial enrollment in a public school, shall be screened in ~~the following areas~~ speech, voice,
6 and language to determine if ~~formal assessment~~ a referral for an evaluation for special
7 education and related services is indicated:~~[:]~~

8 (1) ~~Speech, voice, and language; and~~

9 (2) ~~Vision and hearing.~~

10 b. All children, within 60 business days of initial enrollment, shall be screened in the areas
11 of vision and hearing to determine if [formal assessment a referral for an evaluation for
12 special education and related services] is indicated. In addition, the vision and hearing of
13 all children in grades three, seven, and [10 ten] shall be screened during the school year.

14 ~~b. c.~~ c. All children (through grade 3 three), within 60 administrative working business days
15 of initial enrollment in public schools, shall be screened for fine and gross motor functions
16 to determine [if formal assessment a referral for an evaluation for special education and
17 related services] is indicated.

18 ~~d. [For children entering a public kindergarten or elementary school in Virginia, the~~ The]
19 screening may take place up to 60 business days prior to the start of school. The local
20 school division may recognize screenings reported as part of the child's pre-school physical
21 examination required under the Code of Virginia if completed within the above prescribed
22 time line.

23 ~~e. e.~~ e. Specific measures or instruments will be employed which use:

24 (1) Both observational and performance techniques; and

Virginia Special Education Regulations

1 (2) Techniques which guarantee nondiscrimination.

2 f. Children who fail any of the above screenings may be rescreened after the 60 business
3 days [specified in subdivision b above] if the original results are not considered valid.

4 g. Children shall be referred to the special education administrator or designee no more
5 than [two five] business days after screening [or rescreening] if results suggest [the child
6 may have a disability and may be in need of special education and related services, that a
7 referral for evaluation for special education and related services is indicated.] The referral
8 shall include the screening results.

9 2. Each local school division shall establish and maintain screening procedures to assure the
10 identification of children with suspected disabilities residing within its jurisdiction and
11 requiring special education. [All appropriate procedural safeguards shall be maintained
12 during the screening process. The local school division shall provide all applicable
13 procedural safeguards.] These include the following:

14 a. Written notice to parents of the scheduled screening and, [if the child fails the screening,]
15 the results of the screening;

16 b. Confidentiality; and

17 c. Maintenance of the student's scholastic record.

18 ~~3. There shall be established a formal child study committee in each school to review records~~
19 ~~and other performance evidence of those children referred through a screening process or~~
20 ~~referred by a source other than through screening; for example, when a parent or external~~
21 ~~service provider makes a referral. All referrals for child study shall be made to the principal~~
22 ~~or designee. The committee shall include:~~

23 ~~a. Referring source, as appropriate (except when referring source would breach~~
24 ~~confidentiality of child);~~

25 ~~b. Principal or designee;~~

Virginia Special Education Regulations

1 e. ~~Teachers; and~~

2 d. ~~Specialists.~~

3 ~~The committee must have at least three persons in attendance.~~

4 ~~4. The child study committee shall meet within 10 administrative working days following~~
5 ~~referral.~~

6 ~~5. Actions by the committee shall be documented in writing and shall include information~~
7 ~~upon which a decision was based. The formal assessment components shall not be initiated~~
8 ~~(collected) before referral to the special education administrator and parental consent has~~
9 ~~been obtained.~~

10 ~~D. Referral for evaluation. Children suspected of having a disability shall be referred by the~~
11 ~~child study committee or other referring source to the special education administrator for formal~~
12 ~~assessment. If referral to the special education administrator is from the child study committee, it~~
13 ~~shall be made within five administrative working days following the determination by the child~~
14 ~~study committee that the child is suspected of having a disability.~~

15 [3. A child study committee shall be established in each school to review records and other
16 performance evidence of the children referred through a screening process, or by school staff,
17 the parent or parents, or other individuals.

18 a. All referrals to the child study committee shall be made to the principal or designee. The
19 committee shall include:

20 (1) The referring source, as appropriate (except if inclusion of referring source would
21 breach the confidentiality of the child);

22 (2) The principal or designee;

23 (3) At least one teacher; and

24 (4) At least one specialist.

Virginia Special Education Regulations

1 b. The child study committee shall meet within 10 business days following receipt of the
2 referral. The purpose of the meeting is to identify and recommend strategies to address the
3 child's learning, behavior, communication, or development. This does not preclude the
4 child study committee from making a referral for evaluation for special education and
5 related services prior to implementing strategies. The child study committee shall refer the
6 child to the special education administrator or designee within five business days following
7 the determination by the committee that the child should be referred for an evaluation for
8 special education and related services.

9 c. Actions by the committee shall be documented in writing and shall include information
10 upon which a decision was based.]

11 8 VAC 20-80-52. Referral for evaluation.

12 A. All children, [ages aged] two to 21, inclusive, whether enrolled in public school or not, and
13 who are suspected of having a disability, shall be referred to the special education administrator
14 or designee, who shall initiate the process of determining eligibility for special education and
15 related services.

16 1. Referrals may be made by any source, including a [school-based child study] committee,
17 school staff, a parent or parents, or other individuals.

18 2. If the referral is from a [school-based child study] committee, it shall be made within [two
19 five] business days following the determination by the committee that the child should be
20 referred for evaluation for special education and related services. In addition, the [school-
21 based child study] committee shall report, in writing, on strategies implemented to address
22 the child's learning, behavior, communication[,] or development.

23 3. If the referral is from any other source, the referring party shall inform the special
24 education administrator or designee of why an evaluation is requested and efforts that have
25 been made to address the concerns. The referral may be made [orally or in writing in oral or
26 written form].

Virginia Special Education Regulations

1 B. Procedures for referral for evaluation.

2 1. Upon receipt of the referral, the special education administrator, or designee, shall:

3 ~~1. a.~~ Record the date, reason for referral [,] and names of the person/ or agency making the
4 referral;

5 ~~2. b.~~ Implement procedures for maintaining the confidentiality of all data [;] and ~~institute~~

6 ~~c. Provide]~~ procedural safeguards to[;] ~~a. [(1) Inform inform]~~ the parent or parents ~~[of the]~~
7 ~~referral [child]~~ in the parent's or parents' native language or primary mode of
8 communication, unless it is clearly not feasible to do so[; about:

9 (1) The referral for evaluation and its purpose; and

10 (2) Parental rights with respect to evaluation and other procedural safeguards.]

11 ~~[b. (2) Advise the parent or parents of his their rights in the parent's or parents' native~~
12 ~~language or primary mode of communication; and~~

13 ~~c. Inform, within five business days of receipt of the referral, the referring source and the~~
14 ~~parent or parents if an evaluation to determine eligibility for special education and related~~
15 ~~services will be conducted.~~

16 ~~(1) The special education administrator or designee may refer the child to a school based~~
17 ~~committee to determine if an evaluation shall be completed. This shall occur within~~
18 ~~the five business day time period.~~

19 ~~(2) If the decision is to not evaluate, prior written notice in accordance with 8VAC 20-~~
20 ~~80-70 shall be given to the parent or parents, including their right to appeal this decision.~~

21 ~~(3) If the decision not to evaluate is made by a sole individual, the parent or parents may~~
22 ~~request a school based committee to meet and determine if an evaluation is necessary.~~

23 ~~(4) The decision whether to evaluate or not shall be made within 10 business days of the~~
24 ~~parent's or parents' request.~~

Virginia Special Education Regulations

1 ~~(5) The meeting of the school based committee shall not be used to deny or delay a~~
2 ~~parent's or parents' right to a due~~
3 ~~process hearing to contest the decision not to evaluate.~~

4 2. The special education director or designee may request a review by a child study
5 committee to determine whether an evaluation will be completed if the referral comes from a
6 source other than the child study committee. This request for review shall occur within five
7 business days of the receipt of the referral for evaluation. The decision about whether to
8 evaluate shall be made within 10 business days of the request for review.

9 3. If the child study committee is meeting following the request for review to determine if an
10 evaluation will be completed, the committee shall include all members of the team that meets
11 to determine needed evaluation data, including the parent or parents (e.g., the IEP team and
12 other qualified professionals as appropriate).

13 4. The meeting of the child study committee shall not:

14 a. Deny or delay the parent's or parents' right to a due process hearing to contest the
15 decision not to evaluate;

16 b. Deny or delay the parent's or parents' right to make another referral in the future; or

17 c. Delay the evaluation of a child who is suspected of having a disability.

18 5. The child study committee may attempt classroom interventions during the evaluation
19 process, but such interventions cannot delay the evaluation.]

20 5-6. If the decision is to not evaluate, prior written notice, in accordance with 8 VAC 20-80-
21 70 C, shall be given to the parent or parents, including their right to appeal the decision
22 through due process hearing procedures.

23 2-[7.] If the decision is to conduct an evaluation [,] the special education administrator or
24 designee shall:

Virginia Special Education Regulations

1 e. a. Secure ~~written permission of~~ informed consent from the parent or parents for the
2 formal assessment; evaluation [; .]

3 (1) Parental consent is not required before reviewing existing data as part of an evaluation
4 or administering a test or
5 other evaluation that is administered to all children, unless parental consent is required
6 before administration to all children.

7 (2) If the parent or parents refuse consent for [an] initial evaluation, the local educational
8 agency may continue to pursue ~~those~~ the] evaluations by using due process or mediation
9 procedures.

10 b. Provide all notice and procedural safeguards required by 8 VAC 20-80-70.

11 c. Inform the parent or parents of the procedures for [the] determination of needed
12 evaluation data and request any evaluation information the parent or parents may have.

13 d. Ensure that all evaluations are completed and that decisions about eligibility are made
14 within 65 business days after the referral for evaluation is received by the special education
15 administrator or designee.

16 ~~3. Initiate formal assessment procedures; and~~

17 ~~4. Notify the referral source, when appropriate, of the results of the decision regarding~~
18 ~~determination of eligibility.~~

19 ~~E. 8 VAC 20-80-54. Evaluation.~~

20 A. Each local educational agency shall ensure that all children, ~~[ages aged]~~ two to 21,
21 inclusive, ~~[residing who reside]~~ within its jurisdiction, ~~ages two to 21,~~ [inclusive], who may have
22 disabilities, and who may need special education and related services, are evaluated[. ~~The~~
23 requirements apply to; including children who]:

24 1. ~~[Children who are~~ Are] highly mobile, such as migrant and homeless children;

Virginia Special Education Regulations

1 2. ~~[Children who are~~ Attend private schools [, including children who are home-instructed or
2 home-tutored;

3 3. ~~[Children who are~~ Are suspected of being ~~[a child children]~~ with [a disability disabilities]
4 and [are] in need of special education, even though they are advancing from grade to grade;
5 and

6 4. ~~[Children, Are]~~ under age 18; ~~[who are]~~ suspected of ~~[being a child with having]~~ a
7 disability and in need of special education[.] and [who] are incarcerated [for 10 or more days]
8 in a regional or local jail in [that its] jurisdiction [for 10 or more days].

9 B. Each local educational agency shall conduct a full [and ,] individual [, and] initial evaluation
10 [in accordance with subsections D and E of this section] before the initial provision of special
11 education and related services to a child with a disability.

12 ~~4.~~ C. The LEA local educational agency shall establish procedures for the [initial] evaluation
13 [and reevaluation] of referred children which include the following:

14 a. ~~1.~~ Written prior [notification notice] (in the parent's or parents' native language or mode
15 of communication [unless it is clearly not feasible to do so]);

16 [2. Notice of procedural safeguards;]

17 b. ~~[2.3.]~~ Opportunity for independent [educational] evaluation;

18 c. ~~Written~~ [3.4.] Informed parental consent;

19 d. ~~[4. 5.]~~ Assignment of [a] surrogate parent when necessary;

20 e. ~~[5.6.]~~ Opportunity for an impartial [due process] hearing;

21 f. ~~[6.7.]~~ Confidentiality;

22 g. ~~[7.8.]~~ Opportunity for examination of records; and

23 h. ~~[8.9.]~~ Nondiscriminatory testing.

Virginia Special Education Regulations

1 D. Determination of needed evaluation data.

2 1. Review of existing evaluation data. As part of an initial evaluation, if appropriate~~[, and as~~
3 ~~part of any reevaluation], a group that [includes the individuals described in 8VAC 20-80-62~~
4 ~~€, is comprised of the same individuals as an IEP team] and other qualified professionals, as~~
5 appropriate, shall:

6 a. Review existing evaluation data on the child, including:

7 (1) Evaluations and information provided by the parent or parents of the child;

8 (2) Current classroom-based assessments and observations;

9 (3) Observations by teachers and related services providers; and

10 b. On the basis of that review[;] and input from the child's parent or parents, [or the
11 ~~agency assigned legal custody of the child;] identify what additional data, if any, are~~
12 needed to determine:

13 (1) Whether the child has a particular [category of] disability or disabilities;

14 (2) The present levels of performance and educational needs of the child;

15 (3) Whether the child needs special education and related services; and

16 (4) Whether any additions or modifications to the special education and related services
17 are needed to enable the child to meet the measurable annual goals set out in the IEP of
18 the child and to participate, as appropriate, in the general curriculum.

19 2. Conduct of review. The group completing the review may conduct its review without a
20 meeting. The [parent's or parents' participation local educational agency shall provide notice
21 to ensure that the parent or parents have the opportunity to participate] in the review.
22 ~~[ensured according to the procedures set forth in 8VAC 20-80-62 D: If there is a meeting,~~
23 the local educational agency shall provide notice of the meeting early enough to ensure that

Virginia Special Education Regulations

1 the parent or parents will have an opportunity to participate. The notice must indicate the
2 purpose, date, time, and location of the meeting and who will be in attendance.]

3 3. Need for additional data. The local educational agency shall administer tests and other
4 evaluation materials as may be needed to produce the data identified in this subsection.

5 ~~4. Requirements if additional data are not needed.~~

6 ~~a. If it is determined that no additional data are needed to determine whether the child is a~~
7 ~~child with a disability, the local educational agency shall notify the child's parent or~~
8 ~~parents of that determination and the reasons for it; and, of the right of the parent or parents~~
9 ~~to request an evaluation to determine whether, for purposes of services under this part, the~~
10 ~~child is a child with a disability.~~

11 ~~b. The local educational agency is not required to conduct the evaluation to determine if the~~
12 ~~child is a child with a disability unless requested to do so by the child's parent or parents.~~

13 4. This process shall be considered the evaluation if no additional data are needed.]

14 ~~2.~~ E. The LEA local educational agency shall establish policies and procedures to ensure that
15 ~~tests and other evaluation materials meet the following: requirements are met.~~

16 ~~a.~~ 1. Tests and other evaluation materials used to assess a child under this chapter:

17 (1) ~~a.~~ Are ~~neither culturally nor racially discriminatory~~ selected and administered so as not
18 to be discriminatory on a racial or cultural basis]; [and]

19 (2) ~~b.~~ Are provided and administered in the child's native language or other mode of
20 communication, unless it is clearly not feasible to do so;

21 2. Materials and procedures used to assess a child with limited English proficiency are
22 selected and administered to ensure that they measure the extent to which the child has a
23 disability and needs special education, rather than measuring the child's English language
24 skills.

Virginia Special Education Regulations

1 3. A variety of assessment tools and strategies are used to gather relevant functional and
2 developmental information about the child, including information provided by the parent or
3 parents, and information related to enabling the child to be involved in and progress in the
4 general curriculum (or for a preschool child, to participate in appropriate activities), that may
5 assist in determining whether the child is a child with a disability and the content of the
6 child's IEP.

7 4. ~~Evaluation~~ The assessment] tools and strategies ~~are~~ used ~~that~~ provide relevant
8 information that directly assists persons in determining the educational needs of the child.

9 5. Any standardized tests that are given to a child:

10 ~~(3)~~ a. Have been validated for the specific purpose for which they are used; and

11 ~~(4)~~ b. Are administered by trained personnel in ~~conformance~~ accordance with the
12 instructions provided by ~~their producer~~ the producer of the tests].

13 6. If an ~~evaluation~~ assessment] is not conducted under standard conditions, a description of
14 the extent to which it varied from standard conditions (e.g., the qualifications of the person
15 administering the test or the method of test administration) must be included in the evaluation
16 report.

17 7. Any nonstandardized test, administered by qualified personnel, may be used to assist in
18 determining whether the child is a child with a disability and the contents of the child's IEP.

19 ~~b.~~ 8. Tests and other evaluation materials include those tailored to assess specific areas of
20 educational need and not merely those ~~which~~ that are designed to provide a single general
21 intelligence quotient;.

22 ~~e.~~ 9. Tests are selected and administered so as to best ensure that ~~when~~ if a test is
23 administered to a child with impaired sensory, ~~manual~~ motor], or ~~speaking~~ communication]
24 skills, the test results accurately reflect the child's aptitude or achievement level or whatever
25 other factors the test purports to measure rather than reflecting the child's impaired sensory,

Virginia Special Education Regulations

1 ~~[manual motor]~~, or ~~[speaking communication]~~skills (except where those skills are the factors
2 ~~[which that]~~ the test purports to measure);

3 10. The evaluation is sufficiently comprehensive to identify all of the child's special
4 education and related services needs, whether or not commonly linked to the disability
5 category in which the child has been classified.

6 11. Technically sound instruments are used that may assess the relative contribution of
7 cognitive and behavioral factors, in addition to physical or developmental factors.

8 ~~d.~~ 12. No single procedure [shall be is] used as the sole criterion for determining [whether a
9 child is a child with a disability and for determining] an appropriate educational program for
10 a child;

11 ~~e.~~ 13. If the evaluation requires [more than one component, the evaluation components shall
12 be made completed by assessments in more than one area relating to the suspected
13 disability,] a [multidisciplinary team] or group of persons [group of persons], including at
14 least one teacher or other specialist with knowledge in the area of the suspected disability;],
15 shall complete the assessments].

16 ~~3.~~ [14. For a child suspected of having a specific learning disability, the multidisciplinary
17 team shall include:

18 ~~a. The child's regular teacher or if the child does not have a regular teacher, a classroom~~
19 ~~teacher qualified to teach a child of that age, or if a child is below school age, a person~~
20 ~~qualified to teach that age; and~~

21 ~~b. At least one person qualified to conduct individual diagnostic examinations of children,~~
22 ~~such as a specific learning disabilities teacher, school psychologist, speech language~~
23 ~~pathologist, or remedial reading teacher.]~~

24 ~~4.~~ [15.14.] For a child suspected of having a [specific] learning disability, the evaluation must
25 include an observation of academic performance in the regular classroom by at least one

Virginia Special Education Regulations

1 team member other than the child's regular teacher. In the case of a child of less than school
2 age or out of school, a team member shall observe the child in an environment appropriate
3 for a child of that age.

4 ~~5. The LEA shall establish procedures to ensure:~~

5 ~~a. That [16.15.] Each child is assessed shall be evaluated is assessed~~ by a qualified
6 professional in all areas [~~related~~ relating] to the suspected disability, including, ~~where if~~
7 appropriate, health, vision, hearing, social and emotional status, general intelligence,
8 academic performance, communicative status, ~~and~~ motor abilities, and adaptive behavior.
9 This may include educational, medical, sociocultural, psychological, or developmental
10 assessments. ~~Reports from assessments must be provided in writing. However,~~

11 ~~a.~~ The hearing of each child [with suspected of having] a disability shall be tested screened
12 during the eligibility process prior to [placement in a special education program initial
13 determination of eligibility for special education and related services].

14 ~~b.~~ A complete audiological assessment, including tests which will assess inner and middle
15 ear functioning, ~~must~~ [shall] be performed on each child who is hearing impaired [or deaf]
16 or who fails two hearing screening tests. The second hearing screening test shall be
17 completed not less than 15 nor more than 45 calendar days after administration of the first
18 screening test.

19 ~~b.~~ ~~Parents are provided an opportunity to participate, if they so request, in the consideration~~
20 ~~of the areas to be assessed. Parents must be provided written notification of this right.~~

21 ~~6. The LEA shall establish procedures to ensure that eligibility for special education and~~
22 ~~related services is determined within 65 administrative working days after request for~~
23 ~~evaluation is received by the special education administrator.~~

24 ~~7. A multidisciplinary team may determine that a child has a specific learning disability if:~~

Virginia Special Education Regulations

1 ~~a. The child does not achieve commensurate with his age and ability levels in one or more~~
2 ~~of the areas listed in subdivision E 7 b of this section when provided with learning~~
3 ~~experiences appropriate for the child's age and ability levels; and~~

4 ~~b. The team finds that a child has a severe discrepancy between achievement and~~
5 ~~intellectual ability in one or more of the following areas:~~

6 ~~(1) Oral expression;~~

7 ~~(2) Listening comprehension;~~

8 ~~(3) Written expression;~~

9 ~~(4) Basic reading skill;~~

10 ~~(5) Reading comprehension;~~

11 ~~(6) Mathematical calculations; or~~

12 ~~(7) Mathematical reasoning.~~

13 ~~c. The multidisciplinary team may not identify a child as having a specific learning~~
14 ~~disability if the severe discrepancy between ability and achievement is primarily the result~~
15 ~~of:~~

16 ~~(1) A visual, hearing or motor disability;~~

17 ~~(2) Mental retardation;~~

18 ~~(3) Serious emotional disturbance; or~~

19 ~~(4) Environmental, cultural, or economic disadvantages.~~

20 ~~[17. Reports from evaluations must be provided in writing at 16. A written copy of the~~
21 ~~evaluation report shall be provided to the parent or parents. The report shall be available to~~
22 ~~the parent or parents no later than two business days before] the meeting to determine~~
23 ~~eligibility]. A copy of the evaluation report shall be provided to the parent].~~

Virginia Special Education Regulations

1 F. Reevaluation.

2 1. A reevaluation shall be conducted[:

3 ~~(i)~~ if a. If] conditions warrant a reevaluation;

4 ~~(ii)~~ if b. If] the child's parent ~~[or,~~] parents[,] or teacher requests a reevaluation; or

5 ~~(iii)~~ at c. At] least once every three years.

6 2. ~~The~~ [Review of existing evaluation data. As part of a reevaluation, the] local educational
7 agency shall ensure that a group ~~[of individuals, as described in 8 VAC 20-80-62 C,~~
8 comprised of the same individuals as an IEP team] and other qualified professionals, as
9 appropriate:

10 a. Reviews the reason for the reevaluation request, if applicable, and existing evaluation
11 data on the child, including:

12 (1) Evaluations and information provided by the parent or parents of the child;

13 (2) Current classroom-based assessments and observations; and

14 (3) Observations by teachers and related services providers; and

15 b. ~~Identify~~ Identifies], on the basis of the above review, and input from the child's parent
16 [or parents], what additional data, if any [,] are needed to determine:

17 (1) Whether the child continues to have a particular disability or has any additional
18 disabilities;

19 (2) The present levels of performance and educational needs of the child;

20 (3) Whether the child continues to need special education and related services; and

21 (4) Whether any modifications to ~~the~~ special education and related services are needed
22 to enable the child to meet the measurable annual goals set out in the IEP of the child and
23 to participate, as appropriate, in the general curriculum.

Virginia Special Education Regulations

1 ~~[e. 3. Conduct of review.]~~ The group may conduct its review without a meeting.

2 ~~[3. 4. Need for additional data.]~~ The local educational agency ~~[shall determine, based on the~~
3 ~~review in subdivisions 2 a and b of this subsection, if it]~~ shall administer tests and other
4 evaluation materials[, in accordance with subsection E of this section,] as may be needed to
5 [make the determinations produce the data] identified in subdivision 2 b of this subsection.

6 ~~[a. The local educational agency shall inform the parent and referring teacher, if~~
7 ~~applicable, of its determination.~~

8 5. Requirements if additional data are not needed.]

9 ~~[b. a.]~~ If the determination identified in subdivision [(b)2] of this subsection is that no
10 additional data are needed to determine whether the child continues to be a child with a
11 disability, the local educational agency shall notify the child's parent or parents of (i) that
12 determination and the reasons for it; and (ii) the right of the parent or parents to request an
13 evaluation to determine whether, for purposes of services under this chapter, the child
14 continues to be a child with a disability.

15 ~~[e. b.]~~ The local educational agency is not required to conduct the evaluation to gather
16 additional information to determine whether the child continues to have a particular
17 disability, unless requested to do so by the child's [parent or] parents.

18 [c. This process shall be considered the evaluation if no additional data are needed.]

19 ~~[d. The local educational agency is not required to conduct an evaluation to gather~~
20 ~~additional information if it determines that it does not need additional data to determine:~~

21 ~~(1) The present levels of performance and educational needs of the child;~~

22 ~~(2) Whether the child continues to need special education and related services; and~~

Virginia Special Education Regulations

1 ~~(3) Whether any modifications to the special education and related services are needed to~~
2 ~~enable the child to meet the measurable annual goals set out in the IEP of the child and to~~
3 ~~participate, as appropriate, in the general curriculum.]~~

4 [4.G.] Notice and parental consent.

5 ~~[a.1.] The local educational agency shall provide notice in accordance with 8VAC 20-80-70~~
6 ~~C.~~

7 ~~[b.2.] Parental consent is required before gathering [additional new] evaluation data.~~

8 ~~[(4)a.] If [for a reevaluation] the local educational agency can demonstrate that it has~~
9 ~~taken reasonable measures to obtain that consent and the child's parent or parents have~~
10 ~~failed to respond, the local educational agency shall proceed as if consent has been given~~
11 ~~by the parent or parents. [The procedures in 8VAC 20-80-62 D shall be used to meet the~~
12 ~~reasonable measures requirement. Reasonable measures include providing notice to the~~
13 ~~parent or parents in writing (or by telephone or in person with proper documentation);]~~

14 ~~[(2)b.] If the parent or parents refuse consent for an evaluation or reevaluation, the local~~
15 ~~educational agency may continue to pursue those evaluations by using due process or~~
16 ~~mediation procedures.~~

17 ~~[e.3.] Parental consent is not required before [reviewing:~~

18 ~~a. Review of] existing data as part of [an evaluation or] reevaluation[; or~~

19 ~~b. A teacher's or related service provider's observations or ongoing classroom evaluations.]~~

20 [5.H.] Timelines.

21 ~~a.1. Evaluations shall be completed within 65 business days of the [provision of notice~~
22 ~~specified in subdivision 4 of this subsection receipt of the referral by the special education~~
23 ~~administrator or designee].~~

Virginia Special Education Regulations

1 ~~[b. The determination of whether the child continues to be a child with a disability in need of~~
2 ~~special education and related services shall be completed within 65 business days of the~~
3 ~~notice specified in subdivision 4 of this subsection.~~

4 ~~e.2.] If the reevaluation is [a triennial the] evaluation [required every three years], [the notice~~
5 ~~shall be sent the evaluation shall be initiated] no less than 65 business days prior to the third~~
6 ~~anniversary of the date eligibility was last determined. [The evaluation shall be completed in~~
7 ~~65 business days.]~~

8 ~~[6. The review described in subdivision 2 of this subsection may be used to amend the child's~~
9 ~~IEP, even if no further evaluation data is gathered.]~~

10 ~~F. 8 VAC 20-80-56. Eligibility. Eligibility of children for special education programs and related~~
11 ~~services shall be determined by an eligibility committee.~~

12 ~~1. Membership of the eligibility committee shall include, but not be limited to, school~~
13 ~~division personnel representing the disciplines providing assessments and the special~~
14 ~~education administrator, or designee. At least one school division representative serving on~~
15 ~~the eligibility committee must have either assessed or observed the child.~~

16 ~~2. The eligibility committee shall review the assessments, any pertinent information reported~~
17 ~~by an agency assigned legal custody of the child, and any other special reports to determine if~~
18 ~~the child has a disability which requires special education and related services. Once~~
19 ~~eligibility has been determined, adding a related service to an existing IEP is an IEP~~
20 ~~committee function. The assessments or other relevant data that are required or necessary for~~
21 ~~the proposed related service are forwarded to the IEP committee in order that appropriate~~
22 ~~goals and objectives can be developed.~~

23 ~~A. The local educational agency shall establish procedures to ensure that the decision regarding~~
24 ~~eligibility for special education and related services is made [within 65 business days after]:~~

Virginia Special Education Regulations

1 (2) For a child less than school age, an individual qualified to teach a child of ~~this~~ that
2 age; and

3 b. At least one person qualified to conduct diagnostic examinations of children, such as a
4 school psychologist, speech-language pathologist, teacher of specific learning disabilities[,]
5 or teacher of remedial reading.

6 C. Procedures for determining eligibility [~~and placement~~].

7 1. In interpreting evaluation data for the purpose of determining if a child is a child with a
8 disability and determining the educational needs of the child, the local educational agency
9 shall:

10 a. Draw upon information from a variety of sources, including aptitude and achievement
11 tests, parent input, teacher recommendations, physical condition, social or cultural
12 background, adaptive behavior; and

13 b. Ensure that information from all these sources is documented and carefully considered.

14 ~~3.~~ 2. The ~~eligibility committee~~ [~~team group~~] shall [~~follow due process procedures~~ provide
15 procedural safeguards] in [~~the determination of~~ determining] eligibility and in ensuring the
16 confidentiality of records.

17 ~~[3. The local educational agency must provide a copy of the documentation of the~~
18 ~~determination of eligibility to the parent or parents.]~~

19 ~~[4. 3.]~~ A child may not be determined to be eligible under this chapter if the determinant
20 factor is lack of instruction in reading or math or limited English proficiency; and the child
21 does not otherwise meet the eligibility criteria.

22 ~~4. [5. 4.]~~ The [~~group making the~~] decision regarding the child's eligibility shall [~~be made by~~
23 work toward] consensus. [~~The local educational agency shall obtain parental consent for the~~
24 initial eligibility determination. Thereafter, parental consent shall be secured for any change
25 in identification.] The ~~eligibility committee~~ [~~team group~~] shall have a written summary that

Virginia Special Education Regulations

1 consists of ~~[essential deliberations supporting its findings~~ the basis for making its
2 determination] as to the eligibility of ~~[each~~ the] child for a special education program and
3 related services. This summary shall be signed by each ~~eligibility committee~~ [team group]
4 member present. ~~a.~~ The written summary shall be maintained in the child's ~~confidential files;~~
5 scholastic record.

6 [5. The local educational agency shall provide a copy of the documentation of the
7 determination of eligibility to the parent or parents.]

8 ~~b.~~ 6. The summary statement of the ~~eligibility committee's~~ [team's group's] essential
9 deliberations shall be forwarded ~~by the committee~~ to the IEP ~~committee~~ [team group] upon
10 determination of eligibility. The summary statement may include other recommendations. ~~[A~~
11 ~~statement by each]~~ ~~eligibility committee~~ [team member ~~that the summary statement reflects]~~
12 his ~~[that member's conclusions shall be included.~~

13 a. Each group member shall certify in writing whether the report reflects his or her
14 conclusions.] If the [team group] does not reach consensus and the report does not reflect a
15 particular member's conclusion, then ~~[a separate statement shall be submitted by]~~ the [team
16 group] member [must submit a separate statement] presenting ~~his~~ that member's conclusions.

17 [b. No changes shall be made to a child's eligibility for special education and related
18 services without parental consent.]

19 ~~e.~~ 7. ~~[The written summary concerning students identified as~~ For a child suspected of] having
20 a specific learning disability ~~[shall,~~ the documentation of the group's determination of
21 eligibility must] also include a statement of:

22 ~~(1) A statement indicating~~ a. Whether ~~[or not]~~ the child has a specific learning disability;

23 ~~(2)~~ b. The basis for making the determination;

24 ~~(3)~~ c. ~~[Relevant~~ The relevant] behavior noted during the observation ~~[of the child; and the~~

25 d. The] relationship of the behavior to the child's academic functioning;

Virginia Special Education Regulations

1 (4) ~~[d. Educationally e. The educationally]~~ relevant medical findings, if any;

2 (5) ~~Information indicating [e.f.] Whether [or not] there is a severe discrepancy between the~~
3 ~~child's achievement and ability which that [cannot be corrected is not correctable] without~~
4 ~~special education and related services; and~~

5 (6) ~~[f.g.] The determination of the [team group] concerning [the] effects of any~~
6 ~~environmental, cultural, or economic disadvantage, as determined by the team; and.~~

7 (7) ~~A statement by each eligibility committee member that the report reflects his~~
8 ~~conclusions. If it does not reflect a particular member's conclusion, then the team~~
9 ~~member must submit a separate statement presenting his conclusions.~~

10 G. Termination of services.

11 1. ~~Termination of one or more related services for a child is a function of the IEP committee.~~
12 ~~Termination of related services occurs when the IEP committee determines that the services~~
13 ~~are no longer required in order for the child to benefit from special education.~~

14 2. ~~Termination of all special education services for a child (i.e., removal from special~~
15 ~~education) shall be the responsibility of the eligibility committee. The IEP committee shall~~
16 ~~refer a student to the eligibility committee when they believe the child is no longer eligible to~~
17 ~~receive special education. Termination of special education services occurs:~~

18 a. ~~If the eligibility committee determines that the services are no longer required based on~~
19 ~~the fact that the child no longer meets the eligibility criteria for special education and~~
20 ~~related services and parental consent has been obtained; or~~

21 b. ~~If the parent withdraws permission for the child to remain in special education, then the~~
22 ~~decision of the parent to withdraw the child from special education must be reviewed by~~
23 ~~the LEA pursuant to the change in placement procedures. If the LEA disagrees with the~~
24 ~~withdrawal decision and attempts to resolve parental withdrawal of consent through~~
25 ~~informal methods and are unsuccessful, the LEA must use other measures as necessary to~~

Virginia Special Education Regulations

1 ~~ensure that parental withdrawal of consent will not result in the withdrawal of a necessary~~
2 ~~free appropriate public education.~~

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

8 E. Eligibility of two-year old children. A child, aged two, previously participating in early
9 intervention [programs services] assisted under Part C[²] of the Individuals with Disabilities
10 Education Act (20 USC §§ 1400 et seq.)[,], shall [meet the requirements of this chapter to] be
11 determined eligible under Part B[¹, in accordance with the requirements of this chapter of the
12 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.)].

13 F. Eligibility as a child with a developmental delay. [If the local educational agency elects to
14 use the term developmental delay for children aged two through eight:

15 1. The local educational agency must conform to the definition and age range in this chapter.
16 The local educational agency shall include developmental delay as one of the disability
17 categories when determining whether a preschool child, aged two to five, inclusive, is
18 eligible under this chapter. The local educational agency may include developmental delay
19 as one of the disability categories when determining whether a school-aged child, aged five
20 to eight, inclusive, is eligible under this chapter.

21 2. Other disability categories may be used for any child with a disability aged two to eight,
22 inclusive. However, teacher assignment requirements specified in 8 VAC 20-80-45 shall
23 apply.]

24 G. Criteria for determining the existence of a specific learning disability. The
25 [multidisciplinary team group] may determine that a child has a specific learning disability if:

Virginia Special Education Regulations

- 1 1. The child does not achieve commensurate with the child's age and ability levels in one or
2 more of the areas listed in subdivision 2 of this subsection [when if] provided with learning
3 experiences appropriate for the child's age and ability levels; and
- 4 2. The team finds that a child has a severe discrepancy between achievement and intellectual
5 ability in one or more of the following areas:
- 6 a. Oral expression;
7 b. Listening comprehension;
8 c. Written expression;
9 d. Basic reading skill;
10 e. Reading comprehension;
11 f. Mathematical calculations; or
12 g. Mathematical reasoning.
- 13 3. The [multidisciplinary team group] may not identify a child as having a specific learning
14 disability if the severe discrepancy between ability and achievement is primarily the result of:
- 15 a. A visual, hearing[,] or motor [disability impairment];
16 b. Mental retardation;
17 c. Emotional disturbance; or
18 d. Environmental, cultural, or economic disadvantage.
- 19 [H. Nothing in this chapter requires that children be identified by their disability, as long as
20 each child has a disability under this chapter and by reason of that disability needs special
21 education and related services and is regarded as a child with a disability. Children with
22 disabilities may be identified as having more than one disability.

Virginia Special Education Regulations

1 ~~H. I.] Children found not eligible for special education. Information relevant to instruction for~~
2 ~~a child found not eligible for special education shall be provided to the child's teachers [or any~~
3 ~~appropriate committee. Parental consent to release information shall be secured for children in~~
4 ~~private schools, as necessary].~~

5 ~~H. [I. Child's status pending determination of eligibility. The child shall remain in the current~~
6 ~~placement during determination of eligibility for special education and related services, with the~~
7 ~~exception of the provisions in 8 VAC 20-80-68.]~~

8 ~~J. If the determination is made that a child has a disability and needs special education and~~
9 ~~related services, an IEP must be developed for the child in accordance with this chapter.~~

10 ~~I. K. Child's status; previous enrollment in special education. If a child enrolled in a special~~
11 ~~education program transfers from one LEA to another LEA or from out of state to an LEA, the~~
12 ~~child shall be placed with written consent of the parent in a special education program consistent~~
13 ~~with the current IEP. The IEP committee may decide to continue with the placement. If the IEP~~
14 ~~committee believes the transfer will necessitate a change in educational placement, then the~~
15 ~~eligibility committee shall review the existing evaluations and conduct new evaluations or update~~
16 ~~them as appropriate. Pending the eligibility committee's and IEP committee's determination, the~~
17 ~~child shall be placed with consent of the parent in a special education program consistent with~~
18 ~~the current IEP. In the case of a child placed in a private residential school, absent parental~~
19 ~~consent or absent an appropriate program within the LEA, the child will remain in the private~~
20 ~~residential school until the eligibility committee and IEP committee have made a decision.~~

21 ~~1. If a child with a disability has been receiving special education from one local educational~~
22 ~~agency in Virginia and transfers to another, the new local educational agency is responsible~~
23 ~~for ensuring that the child has available special education and related services in conformity~~
24 ~~with the [former existing] IEP.~~

25 ~~a. The local educational agency shall adopt and implement the [existing] IEP of the former~~
26 ~~local educational agency [with consent of the parent or parents] or develop a new IEP for~~

Virginia Special Education Regulations

1 the child. The new local educational agency may provide interim services agreed to by both
2 the parent or parents and the local educational agency.

3 b. If the parent or parents and the local educational agency are unable to agree on [an]
4 interim [placement services], the local educational agency must implement the [former
5 existing] IEP until a new IEP is developed and implemented.

6 2. When a child with a disability under the Individuals with Disabilities Education Act (20
7 USC §§ 1400 et seq.) transfers to a local educational agency in Virginia from another state,
8 the Virginia local educational agency must [determine decide] whether [a disability exists
9 and whether the evaluation and IEP comply with Virginia's statutes and regulations] it will
10 adopt the most recent evaluation and IEP developed for the child by the local educational
11 agency in the previous state. The Virginia local educational agency must determine, as an
12 initial matter, whether it believes that the [child] has a disability and whether the most recent
13 evaluation of the child conducted by the local educational agency in the previous state and
14 the IEP developed by that local educational agency meet the requirements of the Individuals
15 with Disabilities Education Act (20 USC §§ 1400 et seq.) and this chapter].

16 a. [The local educational agency may adopt and implement the former IEP without a
17 meeting, if the IEP meets the requirements of this chapter and the parent or parents
18 consent.— If the local educational agency accepts the determination made by the local
19 educational agency that the child has a disability in the previous state and adopts that local
20 educational agency's evaluation, the Virginia local educational agency must provide notice
21 to the child's parent or parents in accordance with 8 VAC 20-80-70.]

22 b. [If the local educational agency determines that the former IEP does not meet the
23 requirements of this chapter, an IEP meeting must be held within 10 business days to
24 develop a new IEP, in accordance with this chapter. If the local educational agency
25 determines that the IEP developed by the school division in the previous state meets the

Virginia Special Education Regulations

1 requirements of the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.)
2 and this chapter, the local educational agency:

3 (1) Shall serve the child consistent with the IEP if a copy of the IEP is available, if the
4 parent or parents consent to the implementation of the IEP, and if the local educational
5 agency believes the IEP is appropriate for the child; or

6 (2) Shall conduct an IEP meeting without undue delay if the parent or parents and local
7 educational agency are not satisfied with the IEP developed for the child in the previous
8 state or a revision to the IEP is indicated for other reasons, in no case later than 30
9 calendar days after the date the local educational agency determined that it would accept
10 the evaluation and eligibility determination from the previous state. The most recent IEP
11 must be implemented until the new IEP is developed and agreed upon.]

12 c. If the local educational agency [~~determines that the former evaluation~~] does not [~~meet~~
13 ~~the requirements of this chapter,~~ adopt the previous state's evaluation of the transferring
14 child or does not receive a copy of the evaluation,] the local educational agency [~~must shall~~
15 provide proper notice,] initiate evaluation procedures[, and conduct the evaluation] in
16 accordance with this chapter [~~and conduct the evaluation without undue delay].~~

17 [(1)] During the evaluation, the child shall [~~be placed pursuant to an agreed upon interim~~
18 ~~IEP or in regular education in absence of such agreement. If no mutually agreeable~~
19 ~~placement can be determined, the local educational agency is not obligated to adopt the~~
20 ~~former IEP and provide services according to the former IEP. receive services in~~
21 accordance with the existing IEP, excluding the sections of the IEP that are not in
22 accordance with this chapter. The local educational agency shall inform the parent or
23 parents of the sections of the existing IEP that are not in accordance with this chapter.

24 (2) Once the evaluation is completed and eligibility has been determined, an IEP meeting
25 must be held without undue delay, but in no case later than 30 calendar days after the date
26 the child is determined to be eligible, to develop an appropriate IEP for the child.

Virginia Special Education Regulations

1 d. If the child's parent or parents disagree with the local educational agency's evaluation or
2 proposed IEP, they may initiate a due process hearing. During the pendency of the hearing,
3 the child may be placed as described in subsection K 2 c in the program developed by the
4 IEP team with consent of the parent or parents or in another placement agreeable to the
5 parent or parents and local educational agency. If the parent or parents do not agree to
6 place the child in the program proposed by the IEP team and no other interim placement
7 can be agreed upon, the local educational agency is not required to implement the IEP
8 developed by the school division in the previous state or to approximate the services in that
9 IEP during the pendency of the due process proceedings.]

10 3. When a child with a disability [~~transfers from~~ who was placed in] a private residential
11 school [~~where the child was placed and funded~~] under the Comprehensive Services Act
12 transfers to a new local school division, the new local [~~educational agency~~ school division]
13 must review the current placement and adopt or revise and implement the IEP within 30
14 calendar days [of receipt of written notification of the child's transfer]. The former [~~local~~
15 educational agency and CSA Comprehensive Services Act] team shall be responsible for
16 paying for services until 30 calendar days after the new [CSA Comprehensive Services Act]
17 team receives written notification of the child's residence in the new locality from the former
18 [CSA Comprehensive Services Act] team.

19 8 VAC 20-80-58. Termination of special education and related services.

20 A. A local educational agency must evaluate a child with a disability in accordance with
21 8 VAC 20-80-54 before determining that the child is no longer a child with a disability under this
22 chapter. Evaluation is not required before the termination of eligibility due to graduation with a
23 standard or advanced studies high school diploma or [~~exceeding~~ reaching] the age of [~~eligibility~~
24 22].

Virginia Special Education Regulations

1 B. [Termination of special education services for a child with a disability shall be conducted by
2 the IEP team identified in 8 VAC 20-80-56 B The IEP team shall terminate the child's eligibility
3 for special education and related services].

4 1. Termination of special education services occurs if the team determines that the child is no
5 longer a child with a disability who needs special education and related services and [if
6 parental consent is secured.

7 2. A related service may be terminated during an IEP meeting without any determination that
8 the child is no longer a child with a disability who is eligible for special education and related
9 services. The IEP team making the determination shall include [school division local
10 educational agency] personnel representing the related services disciplines [in person, by
11 telephone, or by other similar electronic means]. Parental consent shall be secured prior to
12 the termination of related services.

13 3. If the parent or parents revoke consent for the child to continue to receive special
14 education and related services[; then the decision of the parent or parents must be reviewed
15 by the special education administrator or designee].

16 [a. If the special education administrator or designee agrees, services will be discontinued
17 as a result of the revocation, but the child will continue to be a child eligible for special
18 education and related services, unless termination of eligibility procedures are followed.

19 b. If the special education administrator or designee disagrees with the revocation of
20 consent and attempts to resolve parental revocation through mediation or informal methods
21 are unsuccessful, the special education administrator or designee must the local educational
22 agency must follow the procedures in 8 VAC 20-80-56 to terminate the child's eligibility
23 or] use other measures as necessary to ensure that parental revocation of consent will not
24 result in the withdrawal of a necessary free appropriate public education for the child.

Virginia Special Education Regulations

1 8 VAC 20-80-60. ~~Service delivery.~~ A. Free appropriate public education.

2 1. A. Age of eligibility.

3 1. A free appropriate public education shall be available to all children with disabilities who
4 need special education and related services, [ages aged] two to 21, inclusive, residing within
5 the jurisdiction of each ~~LEA~~ local educational agency. This includes children with
6 disabilities who are [in need of special education and related services even though they are]
7 advancing from grade to grade or who have been suspended or expelled from school in
8 accordance with the provisions of 8VAC 20-80-68. Each ~~LEA~~ local educational agency shall
9 [have ~~established~~ establish] ~~the~~ a goal of providing a full educational opportunity for all
10 children with disabilities from ~~birth~~ two to 21, inclusive, residing within ~~their~~ its jurisdiction.

11 2. ~~Continuum of alternative placements.~~

12 a. ~~Each local school division shall ensure that a continuum of alternative placements is~~
13 ~~available to meet the needs of children with disabilities.~~

14 (1) ~~The continuum must include the alternative placements listed in the definition of~~
15 ~~special education (i.e., instruction in regular classes, special classes, special schools,~~
16 ~~home instruction, and instruction in hospitals and institutions). The continuum must make~~
17 ~~provision for supplementary services (such as resource room or itinerant instruction) to~~
18 ~~be provided in conjunction with regular class placement. The continuum should include~~
19 ~~integrated service delivery, that is, where some or all goals and objectives of the student's~~
20 ~~individualized educational program are met in the general education setting with~~
21 ~~age appropriate peers.~~

22 (2) ~~No single model for the delivery of services to any specific population or category of~~
23 ~~children with disabilities will be acceptable for meeting the requirement for a continuum~~
24 ~~of alternative placements (e.g., resource classes as the only option for children who need~~
25 ~~a self-contained placement or a separate facility as the only alternative placement for~~

Virginia Special Education Regulations

1 ~~students with disabilities). All placement decisions must be based on the individual needs~~
2 ~~of each child.~~

3 ~~(3) LEAs shall document fully all alternatives considered and the rationale for choosing~~
4 ~~the selected placement.~~

5 ~~(4) Children with disabilities must be served in a program with age appropriate peers~~
6 ~~(e.g., secondary age children shall be placed in a secondary school and elementary age~~
7 ~~children shall be placed in an elementary school), unless it can be shown that for a~~
8 ~~particular child with a disability the alternative placement is appropriate as documented~~
9 ~~by the IEP.~~

10 ~~b. If a local school division is unable to provide a free appropriate public education to a~~
11 ~~child with a disability and it is not appropriately available in a state facility, other than~~
12 ~~Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the~~
13 ~~child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for~~
14 ~~children with disabilities approved by the Board of Education or such other licensing~~
15 ~~agency as may be designated by state law. The school board of such division shall pay to,~~
16 ~~or on behalf of, the parent or guardian of such child the reasonable tuition cost and other~~
17 ~~reasonable charges as may be determined under the rules of the Interdepartmental Council~~
18 ~~on Rate Setting as adopted by the Boards of Education, Social Services and Corrections.~~
19 ~~The school board, from its own funds, is authorized to pay such additional tuition or~~
20 ~~charges as it may deem appropriate.~~

21 ~~3. Least restrictive environment (LRE):~~

22 ~~a. Each LEA shall establish and implement procedures which satisfy requirements as~~
23 ~~follows:~~

24 ~~(1) To the maximum extent appropriate, children with disabilities, including those in~~
25 ~~public or private institutions or other care facilities, are educated with children who are~~
26 ~~not disabled; and~~

Virginia Special Education Regulations

1 ~~(2) Special class placement, separate schooling or other removal of children with~~
2 ~~disabilities from the regular educational environment occurs only when the nature or~~
3 ~~severity of the disability is such that education in regular classes with the use of~~
4 ~~supplementary aids and services cannot be achieved satisfactorily.~~

5 ~~b. In providing or arranging for the provision of nonacademic and extracurricular services~~
6 ~~and activities, including meals, recess periods, and other services and activities provided~~
7 ~~for nondisabled children, each LEA shall ensure that each child with a disability~~
8 ~~participates with nondisabled children in those services and activities, to the maximum~~
9 ~~extent appropriate to the needs of the child with a disability.~~

10 ~~c. For children in public or private institutions, the LEA shall, where necessary, make~~
11 ~~arrangements with public and private institutions to ensure that requirements for least~~
12 ~~restrictive environment are met. (See Placements, 8 VAC 20-80-60 B 8.)~~

13 4. Safeguards in evaluation, eligibility and placement.

14 ~~a. In interpreting evaluation data and in making eligibility and placement decisions, each~~
15 ~~LEA shall:~~

16 ~~(1) Draw upon information from a variety of sources, including aptitude and achievement~~
17 ~~tests, teacher recommendations, physical condition, social or cultural background, and~~
18 ~~adaptive behavior;~~

19 ~~(2) Ensure that information obtained from all of these sources is documented and~~
20 ~~carefully considered;~~

21 ~~(3) Ensure that the placement decision is made by a group of persons, including persons~~
22 ~~knowledgeable about the child, the meaning of the evaluation data, and the placement~~
23 ~~options; and~~

24 ~~(4) Ensure that the placement decision is made in conformity with the least restrictive~~
25 ~~environment (see Least Restrictive Environment, 8 VAC 20-80-60 A 3).~~

Virginia Special Education Regulations

1 ~~b. If it is determined that a child has a disability and needs special education and related~~
2 ~~services, an IEP must be developed for the child in accordance with this chapter.~~

3 a. The services provided to the child under this chapter shall address all of the child's
4 identified special education and related services needs.

5 b. The services and placement needed by each child with a disability to receive a free
6 appropriate public education must be based on the child's unique needs and not on the
7 child's disability.

8 2. Exceptions. The obligation to make a free appropriate public education available to all
9 children with disabilities does not apply to:

10 a. Children with disabilities who have graduated from high school with a standard or
11 advanced studies high school diploma. This exception does not apply to students who have
12 graduated but have not been awarded a standard or advanced studies high school diploma.

13 ~~[b. A child who has been excused from compulsory school attendance in accordance with~~
14 ~~provisions of the Code of Virginia.]~~

15 ~~e. [Students~~ b. Children with disabilities, aged 18 ~~[through~~ to] 21 ~~[inclusive,]~~ who, if in
16 their last educational placement prior to their incarceration in an adult correctional facility,
17 were not identified as being a child with a disability; and did not have an IEP. This
18 exception does not apply to [students children] with disabilities, aged 18 [through to] 21[,
19 inclusive], who had been identified as [a child children] with [a disability disabilities] and
20 had received services in accordance with [an IEP their IEPs], but who left school prior to
21 their incarceration or did not have [an IEP IEPs] in their last educational setting but who
22 had actually been identified as [child children] with [a disability disabilities] under this
23 chapter.

24 B. Program options. Each local [educational agency school division] shall take steps to ensure
25 that its children with disabilities have available to them the variety of educational programs and

Virginia Special Education Regulations

1 services available to children without disabilities in the area served by the local educational
2 agency, including art, music, industrial arts, consumer and homemaking education, and
3 vocational education.

4 C. Residential placement. If placement in a public or private residential program is necessary
5 to provide special education and related services to a child with a disability, the program,
6 including nonmedical care and room and board, must be at no cost to the parent or parents of the
7 child.

8 D. Proper functioning of hearing aids. Each local educational agency shall ensure that the
9 hearing aids worn in school by children with hearing impairments, including deafness, are
10 functioning properly.

11 E. Assistive technology.

12 1. Each local educational agency shall ensure that assistive technology devices or assistive
13 technology services, or both, as those terms are defined in this chapter, are made available to
14 a child with a disability if required as part of the child's:

15 a. Special education;

16 b. Related services; or

17 c. Supplementary aids and services.

18 2. On a case-by-case basis, the use of school-purchased or leased assistive technology
19 devices in a child's home or in other settings is required if the child's IEP team determines
20 that the child needs access to those devices in order to receive a free appropriate public
21 education.

22 5- F. Transportation.

23 a. 1. Each child with a disability placed in an education program, including private special
24 education day or residential placements, by the local school division shall be entitled to

Virginia Special Education Regulations

1 transportation to and from such program at no cost if such transportation is necessary to
2 enable such child to benefit from educational programs and opportunities. ~~[There is no~~
3 ~~prohibition against regular education and special education students sharing the same~~
4 ~~transportation.~~ Children with disabilities and children without disabilities shall share the
5 same transportation unless a child's IEP requires specialized transportation.

6 2. If the IEP team determines that a child with a disability requires accommodations or
7 modifications to participate in transportation, the accommodations or modifications must be
8 provided in the least restrictive environment. Transportation personnel may be on the IEP
9 team or be consulted before any modifications or accommodations are written into the
10 student's IEP to ensure that the modifications and accommodations do not violate any state
11 or federal standard or any nationally-recognized safety practices.]

12 ~~b. [2. 3.]~~ If an LEA a local educational agency enters an agreement with another LEA local
13 educational agency for the provision of special education or related services for a child with a
14 disability, such child shall be transported to and from such program at no cost to the parent or
15 parents.

16 ~~e. 3. 4.~~ If a child with a disability is placed in a state-residential [the] Virginia [school
17 School] for the [deaf Deaf] and the [blind Blind at Staunton or the Virginia School for the
18 Deaf, Blind and Multi-Disabled at Hampton,] the [responsibility Virginia school shall be
19 responsible] for [the provision of] transportation [resides with the respective] state [Virginia
20 school for the deaf and the blind services.] However, When such children in a state
21 residential school are educated as day students, [the responsibility for transportation remains
22 with the placing local school division. the local school division shall be responsible for the
23 provision of transportation services to and from school].

24 ~~6. Reevaluation.~~

Virginia Special Education Regulations

1 ~~a. A reevaluation in all areas related to the suspected disability must be conducted (i) every~~
2 ~~three years; (ii) if conditions warrant a reevaluation at an earlier date; or (iii) if the child's~~
3 ~~parent or teacher requests a reevaluation.~~

4 ~~b. A reevaluation need not consist of all of the same assessments conducted during the~~
5 ~~initial evaluation as long as the reevaluation includes assessment in all areas related to the~~
6 ~~suspected disability. If three years have not elapsed and the parent or teacher requests that~~
7 ~~only specified areas be addressed by additional evaluation, and conditions do not warrant a~~
8 ~~reevaluation or an assessment which is more comprehensive than that requested by the~~
9 ~~parent or teacher, the LEA may limit the assessment to those areas which the parent or~~
10 ~~teacher requested.~~

11 ~~c. Notice is required for all reevaluations.~~

12 ~~7. G. Nonacademic and extracurricular services and activities.~~

13 ~~1. Each LEA local educational agency shall take steps to provide nonacademic and~~
14 ~~extracurricular services and activities in ~~such~~ the manner ~~as is~~ necessary to afford children~~
15 ~~with disabilities an equal opportunity for participation in those services and activities.~~

16 ~~2. Nonacademic and extracurricular services and activities may include but not be limited to~~
17 ~~counseling services, athletics, transportation, health services, recreational activities, special~~
18 ~~interest groups or clubs sponsored by the local educational agency, referrals to agencies that~~
19 ~~provide assistance to individuals with disabilities, and employment of students, including~~
20 ~~both employment by the local educational agency and assistance in making outside~~
21 ~~employment available.~~

22 ~~8. H. Physical education.~~

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

Virginia Special Education Regulations

1 ~~b.~~ 2. Regular physical education. Each child with a disability must be afforded the
2 opportunity to participate in the regular physical education program available to ~~nondisabled~~
3 children without disabilities, unless:

4 ~~(1)~~ a. The child is enrolled full time in a separate facility; or

5 ~~(2)~~ b. The child needs specially designed physical education, as prescribed in the child's
6 IEP that cannot be provided in the regular physical education program.

7 ~~c.~~ 3. Special physical education. If specially designed physical education is prescribed in a
8 child's IEP, the ~~LEA~~ local educational agency responsible for the education of that child
9 shall provide the services directly^[7] or make arrangements for those services to be provided
10 through other public or private programs.

11 ~~d.~~ 4. Education in separate facilities. The ~~LEA~~ local educational agency responsible for the
12 education of a child with a disability who is enrolled in a separate facility shall ensure that
13 the child receives appropriate physical education services in compliance with subdivisions ~~g~~
14 ~~a~~ 1 and ~~e~~ 3 of this subsection.

15 I. Extended school year services.

16 1. Each local educational agency shall ensure that extended school year services are available
17 as necessary to provide a free appropriate public education, consistent with subdivision 2 of
18 this subsection.

19 2. Extended school year services must be provided only if a child's IEP team determines^[7]
20 on an individual basis^[7] in accordance with this chapter^[7] that the services are necessary for
21 the provision of a free appropriate public education to the child.

22 3. In implementing the requirements of this section, a local educational agency may not:

23 a. Limit extended school year services to particular categories of disability; or

24 b. Unilaterally limit the type, amount, or duration of those services.

Virginia Special Education Regulations

1 J. Children with disabilities in public charter schools.

2 1.Children with disabilities who attend charter schools [that are public schools of the local
3 educational agency] must be served by the local [educational agency school division] in the
4 same manner as children with disabilities in its other schools.

5 2.The local [educational agency school division] must ensure that all requirements of this
6 chapter are met.

7 [K. Length of school day. School-aged students with disabilities shall be provided a school day
8 comparable in length to the day provided to school-aged students without disabilities unless
9 their IEP specifies otherwise.]

10 ~~B.~~ 8 VAC 20-80-62. Individualized education program.

11 ~~1.~~ A. Responsibility. The LEA local educational agency shall ensure that an IEP is developed
12 and implemented for each child with a disability [in its jurisdiction served by that local
13 educational agency], including [such children a child] placed in [a] private special education
14 [schools school] or facilities by [a:

15 1. A] local [educational agency school division;] or

16 [2. A non-educational placement by] a Comprehensive Services Act team that includes the
17 local school division. [The local school division's responsibility is limited to special education
18 and related services.]

19 ~~2.~~ B. Accountability.

20 [1. At the beginning of each school year, each local educational agency shall have an IEP in
21 effect for each child with a disability within its jurisdiction, with the exception of children
22 placed [in a private school] by parents when a free appropriate public education is not at
23 issue.]

24 a. [1. An IEP must 2. Each local educational agency shall ensure that an IEP]:

Virginia Special Education Regulations

1 (1) a. ~~[Be Is]~~ in effect before special education and related services are provided to a an
2 eligible child; and

3 (2) b. ~~[Be Is]~~ developed within 30 calendar days of a [the date of] the initial determination
4 that the child needs special education and related services, and ~~be is~~ implemented as soon
5 as possible following the IEP meeting.

6 ~~[2. 3.]~~ Each local educational agency shall ensure that:

7 a. The child's IEP is accessible to each regular education teacher, special education teacher,
8 related service provider, and other service provider who is responsible for its
9 implementation; and

10 b. Teachers and providers are informed of:

11 (1) Their specific responsibilities related to implementing the child's IEP; and

12 (2) The specific accommodations, modifications, and supports that must be provided for
13 the child in accordance with the IEP.

14 ~~b. [3. 4.]~~ Each LEA local educational agency is responsible for initiating and conducting
15 meetings to develop, review and revise a child with a disability's IEP the IEP [or IFSP] of a
16 child with a disability.

17 ~~[5. Each local educational agency shall ensure that within a reasonable period of time~~
18 ~~following the receipt of parental consent to an initial evaluation, the evaluation of the child,~~
19 ~~and, if determined eligible, special education and related services are made available to the~~
20 ~~child in accordance with an IEP. Each local educational agency shall ensure that a meeting~~
21 ~~to develop an IEP for the child is conducted within 30 calendar days of the date of a~~
22 ~~determination that the child needs special education and related services.]~~

23 e. ~~[4. 6.]~~ Each LEA local educational agency shall ~~initiate and conduct meetings~~ ensure that
24 the IEP team reviews the child's IEP] periodically, but not less than annually, [to review each
25 ~~child's IEP to determine whether the annual goals are being achieved] and[, where~~

Virginia Special Education Regulations

1 ~~appropriate, to] revise its provisions [as appropriate]. A meeting must be held for this purpose~~
2 ~~at least once a year. to address:~~

3 a. Any lack of expected progress toward the annual goals and in the general curriculum, f
4 appropriate;

5 b. The results of any reevaluation conducted under this chapter;

6 c. Information about the child provided to [;] or by [;] the parent or parents;

7 d. The child's anticipated needs; or

8 e. Other matters.

9 ~~4. [5; 7.] Each LEA local educational agency must provide special education and related~~
10 ~~services to a child with a disability in accordance with an the child's IEP.~~

11 [6; 8.] Each local educational agency must make a good faith effort to assist the child to
12 achieve the goals [and including benchmarks or] objectives [or benchmarks] listed in the
13 IEP.

14 [7; 9.] This chapter does not require that any local education agency, teacher[,] or other
15 person be held accountable if a child does not achieve the growth projected in the annual
16 goals [and, including] benchmarks or objectives. However, the Virginia Department of
17 Education and local educational agencies are not prohibited from establishing their own
18 accountability systems regarding teacher, school, or agency performance.

19 [8;10.] Nothing in this section limits a parent's or parents' right to ask for revisions of the
20 child's IEP or to invoke due process procedures [under sections 76 and 78 of this chapter] if
21 the parent or parents feel that the efforts required by this chapter are not being met.

22 ~~3. Participants in meeting.~~

23 [11. All IEPs developed[,] reviewed[,] or revised on or after July 1, 1998[,] must meet the
24 requirements of this section.

Virginia Special Education Regulations

1 C. IEP team.

2 a. 1. General. The LEA local educational agency shall ensure that each meeting includes
3 participants as follows the IEP team for each child with a disability includes:

4 (1) ~~A representative of the LEA, other than the child's teacher, who is qualified to~~
5 ~~provide or supervise the provision of special education;~~

6 (2) ~~The child's teacher;~~

7 (3) ~~One or both of the child's parents (see parent participation, 8 VAC 20-80-60 B 4);~~

8 (4) ~~The child, if appropriate;~~

9 (5) ~~Other individuals, at the discretion of the parents or LEA.~~

10 b. ~~For a child with a disability who has been evaluated for the first time, the LEA shall~~
11 ~~ensure that:~~

12 (1) ~~A member of the evaluation team participates in the meeting; or~~

13 (2) ~~The representative of the LEA, the child's teacher, or some other person is present at~~
14 ~~the meeting who is knowledgeable about the evaluation procedures used with the child~~
15 ~~and is familiar with the results of the evaluation.~~

16 a. The parent [or parents] of the child;

17 b. At least one regular education teacher of the child (if the child is [½] or may be [½]
18 participating in the regular education environment);

19 c. At least one special education teacher of the child [½] or [¼] if appropriate, at least one
20 special education provider of the child. For a child whose ~~primary~~ only disability is speech-
21 language impairment, the special education provider ~~may~~ shall be the speech-language
22 pathologist.

23 d. A representative of the local educational agency who is:

Virginia Special Education Regulations

1 (1) Qualified to provide or supervise the provision of specially designed instruction to
2 meet the unique needs of children with disabilities;

3 (2) Knowledgeable about the general curriculum; and

4 (3) Knowledgeable about the availability of resources of the local educational agency.

5 A local educational agency may designate another member of the IEP team to serve
6 simultaneously as the agency representative if that individual meets the above criteria.

7 e. An individual who can interpret the instructional implications of evaluation results. This
8 individual may be a member of the team serving in another capacity, other than the parent
9 or the child.

10 f. At the discretion of the parent, parents, or local educational agency, other individuals
11 who have knowledge or special expertise regarding the child, including related services
12 personnel, as appropriate. The determination of the knowledge or special expertise of any
13 individual shall be made by the party (parent, parents, or local educational agency) who
14 invited the individual to be a member of the IEP team.

15 g. If appropriate, the child.

16 h. For children who are in the custody of a local social services or other child welfare
17 agency, the child's caseworker pursuant to the following conditions:

18 (1) The caseworker may not assume the role of the parent at the meeting; and

19 (2) If the caseworker is unable to attend the meeting as scheduled, the meeting may be
20 held without ~~them~~ the caseworker.

21 2. Transition service participants.

22 ~~e. If a purpose of the IEP meeting is the consideration of transition services for a student,~~
23 ~~the public~~ a. The local educational agency shall invite: (i) the student; and (ii) a student of

Virginia Special Education Regulations

1 any age with a disability of any age to attend the student's IEP meeting if a purpose of the
2 meeting will be the consideration of:

3 (1) The student's transition services needs;

4 (2) The needed transition services for the student; or

5 (3) Both.

6 b. If the student does not attend the IEP meeting, the local educational agency shall take
7 other steps to ensure that the student's preferences and interests are considered.

8 c. In implementing the transition requirements for a student with a disability, beginning at
9 age 16^[1] or younger^[2] (if determined appropriate by the IEP team [3]) ~~with a disability.~~^[2]
10 the local educational agency also shall invite a representative of any other agency that is
11 likely to be responsible for providing or paying for transition services. ~~If the student does~~
12 ~~not attend, the LEA shall take other steps to ensure that the student's preferences and~~
13 ~~interests are considered, and~~ If an agency invited to send a representative to a meeting does
14 not do so, the ~~LEA~~ local educational agency shall take other steps to obtain the
15 participation of the other agency in the planning of any transition services.

16 4. D. Parent participation.

17 a. 1. Each LEA local educational agency shall take steps to ensure that one or both of the
18 parents of the child with a disability are present at each IEP meeting or are afforded the
19 opportunity to participate, including:

20 ~~(1)~~ a. Notifying the parent or parents of the meeting early enough to ensure that they will
21 have an opportunity to attend; and

22 ~~(2)~~ b. Scheduling the meeting at a mutually agreed on time and place.

23 2. Notice.

24 ~~b.~~ a. General notice. The notice given the parent or parents must ~~must~~ should:

Virginia Special Education Regulations

1 (1) ~~[Be Should be]~~ in writing~~[Notice;]~~ but may be given by telephone or in person~~;~~
2 with proper documentation;

3 (2) ~~[Indicate Shall indicate]~~ the purpose, date~~;~~ time~~;~~ and location of the meeting, and
4 who will be in attendance; and

5 (3) ~~[Inform Shall inform]~~ the parent or parents of the provisions relating to the
6 participation of other individuals on the IEP team who have knowledge or special
7 expertise about the child [as noted in paragraph C 1 f of this section.]

8 ~~e. If a purpose of the meeting is the consideration of transition services for a student, b.~~
9 Additional notice requirements are provided if transition services are under consideration.

10 (1) For a student with a disability [beginning at] age 14 or younger, if appropriate, with a
11 disability the notice must also:

12 (1) (a) Indicate this that a purpose of the meeting will be the development of a
13 statement of the transition services needs of the student; and

14 (2) (b) Indicate that the LEA local educational agency will invite the student; and.

15 (2) For a student with a disability [beginning at] age 16 or younger, if appropriate, with a
16 disability the notice must:

17 (a) Indicate that a purpose of the meeting [is will be] the consideration of needed
18 transition services for the student;

19 (b) Indicate that the [local educational] agency will invite the student; and

20 (3) (c) Identify any other agency that will be invited to send a representative.

21 [c. A copy of the procedural safeguards available to the parent or parents of a child with a
22 disability must be given to the parent or parents upon each notification of an IEP meeting
23 in accordance with 8 VAC 20-80-70.]

Virginia Special Education Regulations

1 ~~d.~~ 3. If neither parent can attend, ~~then~~ the ~~LEA~~ local educational agency shall use other
2 methods to ensure parent participation, including individual or conference telephone calls.

3 ~~e.~~ 4. A meeting may be conducted without ~~the child's parents attending~~ a parent or parents in
4 attendance if the ~~LEA~~ local educational agency is unable to convince ~~them~~ the parent or
5 parents that they should attend. In this case, the ~~LEA~~ local educational agency must have a
6 record of the attempts to arrange a mutually agreed on time and place, such as:

7 ~~(1)~~ a. Detailed records of telephone calls made or attempted and the results of those calls;

8 ~~(2)~~ b. Copies of correspondence sent to the parent or parents and any responses received;
9 [or]

10 ~~(3)~~ c. Detailed records of visits made to the parent's or parents' home or place of
11 employment and the results of those visits.

12 ~~f.~~ 5. The ~~LEA~~ local educational agency shall take whatever action is necessary to ensure that
13 the parent understands or parents understand the proceedings at a the IEP meeting, including
14 arranging for an interpreter for parents ~~who are deaf~~ with deafness or whose native language
15 is other than English.

16 6. The local educational agency [has the option to require, prohibit, limit or otherwise
17 regulate shall permit] the use of audio [or video] recording devices at IEP meetings. [The
18 parent or parents shall inform the local educational agency before the meeting in writing,
19 unless the parents cannot write in English, that they will be audio recording the meeting. If
20 the parent or parents do not inform the local educational agency, the parent or parents shall
21 provide the local educational agency with a copy of the audio recording. The parent or
22 parents shall provide their own audio equipment and materials for audio recording. If the
23 local educational agency audio records the meetings or receives a copy of an audio recording
24 from the parent or parents, the audio recording becomes part of the child's educational
25 record. [If the local educational agency has a written policy that prohibits or limits the use of
26 recording devices at IEP meetings:

Virginia Special Education Regulations

1 a. That policy must provide for exceptions if they are necessary to ensure that the parent or
2 parents understand the IEP or the IEP process or to implement other parental rights
3 guaranteed under this chapter; and

4 b. Ensure that the policy is uniformly applied.]

5 [7. The local educational agency may prohibit, limit, or otherwise regulate the use of video
6 recording devices at IEP meetings. If the local educational agency video records the
7 meetings, the video recording becomes part of the child's educational record. If the local
8 educational agency has a policy that prohibits or limits the use of video recording devices at
9 IEP meetings:

10 a. That policy must provide for exceptions if they are necessary to ensure that the parent or
11 parents understand the IEP or the IEP process or to implement other parental rights
12 guaranteed under this chapter; and

13 b. The local educational agency must ensure that the policy is uniformly applied.

14 8. At the IEP meeting, the IEP team shall provide the parent or parents of a child with a
15 disability with a written description of the factors in subsection E 1 and E 2 of this section
16 that will be considered during the IEP meeting. The description shall be written in language
17 understandable by the general public and provided in the native language of the parent or
18 parents or other mode of communication used by the parent or parents, unless it is clearly not
19 feasible to do so.]

20 g. ~~7.~~ [9.] The LEA local educational agency shall give the parent or parents a copy of the
21 child's IEP at no cost to the parent or parents.

22 E. Development, review[,] and revision of the IEP.

23 1. In developing each child's IEP, the IEP team shall ~~document consideration of~~ consider:

24 a. The strengths of the child and the concerns of the parent or parents for enhancing the
25 education of their child;

Virginia Special Education Regulations

- 1 b. The results of the initial or most recent evaluation of the child; [and]
- 2 c. As appropriate, the results of the child's performance on any general state or division-
- 3 wide assessment programs.
- 4 2. The IEP team also shall [document consideration]:
- 5 a. In the case of a child whose behavior impedes the child's learning or that of others,
- 6 consider, if appropriate, strategies, including positive behavioral interventions, strategies,
- 7 and supports to address that behavior;
- 8 b. In the case of a child with limited English proficiency, consider the language needs of
- 9 the child as those needs relate to the child's IEP;
- 10 c. In the case of a child who is blind or visually impaired, provide for instruction in Braille
- 11 and the use of Braille unless the IEP team determines after an evaluation of the child's
- 12 reading and writing skills, needs, and appropriate reading and writing media [(,) including
- 13 an evaluation of the child's future needs for instruction in Braille or the use of Braille(,)],
- 14 that instruction in Braille or the use of Braille is not appropriate for the child;
- 15 d. Consider the communication needs of the child;
- 16 e. In the case of a child who is deaf or hard of hearing, consider the child's language and
- 17 communication needs, opportunities for direct communications with peers and professional
- 18 personnel in the child's language and communication mode, academic level, and full range
- 19 of needs, including opportunities for direct instruction in the child's language and
- 20 communication mode; and
- 21 f. Consider whether the child requires assistive technology devices and services.
- 22 ~~[3. In conducting a meeting to develop, review and, if appropriate, revise a child's IEP, the~~
- 23 ~~IEP team shall consider and document the special factors described above.]~~

Virginia Special Education Regulations

1 [4.3.] If, in considering the special factors, the IEP team determines that a child needs a
2 particular device or service [(,] including an intervention, accommodation, or other program
3 modification[)] in order for the child to receive a free appropriate public education, the IEP
4 team must include a statement to that effect in the child's IEP.

5 [5.4] The regular education teacher of a child with a disability, as a member of the IEP team,
6 must, to the extent appropriate, participate in the development, review, and revision of the
7 child's IEP, including assisting in the determination of:

8 a. Appropriate positive behavioral interventions and strategies for the child; and

9 b. Supplementary aids and services, accommodations, program modifications or supports
10 for school personnel that will be provided for the child.

11 [6.5] Nothing in this section shall be construed to require the IEP team to include information
12 under one component of a child's IEP that is already contained under another component of
13 the child's IEP.

14 [~~7. Consideration of a free appropriate public education.~~ 6.] The IEP team shall consider all
15 factors identified under a free appropriate public education in 8 VAC 20-80-60, as
16 appropriate, and [make all decisions by work toward] consensus. If the IEP team cannot
17 reach consensus[;

18 a. ~~The local educational agency determines the contents of the IEP;~~

19 b. ~~The,~~ the local educational agency shall [then] provide the parent or parents with prior
20 written notice of the local educational agency's proposals or refusals, or both, regarding the
21 child's educational [program placement or provision of a free appropriate public education
22 in accordance with 8 VAC 20-80-70].

23 [c. ~~The parents have the right to challenge the new IEP by initiating an impartial due~~
24 process hearing.

Virginia Special Education Regulations

1 ~~d. If the parent or parents initiate a due process hearing, the previous IEP becomes the stay~~
2 ~~put placement unless the parent or parents and the local educational agency agree to~~
3 ~~implement the new IEP provisions which they can agree upon as an interim IEP.~~

4 ~~e. If the parent or parents do not request a due process hearing and the above procedures~~
5 ~~are followed, the new IEP shall go into effect.]~~

6 5. F. Content of the individualized education program. The IEP for each child ~~must~~ with a
7 disability shall include:

8 a. 1. A statement of the child's present ~~level~~ levels of educational performance., including[;]

9 ~~(1) The statement should accurately describe the effect of the child's disability on the~~
10 ~~child's performance in any area of education that is affected including academic areas~~
11 ~~and nonacademic areas.~~

12 ~~[a. How~~ how] the child's disability affects the child's involvement and progress in the
13 general curriculum; or

14 ~~[b. For~~ for] preschool children, as appropriate, how the disability affects the child's
15 participation in appropriate activities[;, and the child's other educational needs that result
16 from the child's disability.]

17 ~~(2) [e. (1)]~~ The statement should be written in objective measurable terms, to the extent
18 possible. Test scores, if appropriate, should be self-explanatory or an explanation should be
19 included.

20 ~~(3) [d. There should be a direct relationship between the~~ (2) The] present level of
21 performance ~~[and~~ should directly relate to] the other components of the IEP.

22 ~~[e. The child's other educational needs that result from the child's disability.]~~

23 b. 2. A statement of measurable annual goals, including benchmarks or short-term
24 instructional objectives[;, related to:

Virginia Special Education Regulations

1 a. Meeting the child's needs that result from the child's disability to enable the child to be
2 involved in and progress in the general curriculum, or for preschool children, as
3 appropriate, to participate in appropriate activities; and

4 b. Meeting each of the child's other educational needs that result from the child's disability.

5 e. 3. A statement of the ~~specific~~ special education and related services and supplementary
6 aids and services to be provided for the child, and the extent to which the child will be able to
7 participate in regular educational programs, or on behalf of the child, and a statement of the
8 program modifications or supports for school personnel that will be provided for the child:

9 a. To advance appropriately toward attaining the annual goals;

10 b. To be involved ~~(in)~~ and progress in the general curriculum and to participate in
11 extracurricular and other nonacademic activities; and

12 c. To be educated and participate with other children with disabilities and children without
13 disabilities in the activities described in this section.

14 4. An explanation of the extent, if any, to which the child will not participate with children
15 without disabilities in the regular class and in the activities described in this section.

16 5. ~~[Assessments.]~~ The following information concerning ~~[state-wide state]~~ and division-wide
17 assessments shall be included:

18 a. A statement of any individual accommodations or modifications, ~~[in accordance with the~~
19 guidelines] approved by the Board of Education, ~~[for use]~~ in the administration of ~~[state-~~
20 wide state] assessments of student achievement that are needed in order for the child to
21 participate in the assessment;

22 ~~[b. A statement of any individual accommodations or modifications approved for use in the~~
23 administration of division wide assessments of student achievement that are needed in
24 order for the child to participate in the assessment;]

Virginia Special Education Regulations

1 [e. b.] If the IEP team determines that the child will not participate in a particular [state-
2 wide or division-wide state] assessment of student achievement (or part of an assessment),
3 a statement of:

4 (1) Why that assessment is not appropriate for the child;

5 (2) How the child will be assessed, including [participation in] the alternate assessment
6 [which the student will participate in if they cannot participate in the state wide or
7 district wide assessment program for those students who meet the criteria for the alternate
8 assessment; and]

9 (3) [Documentation of the discussion and the parent's or parents' understanding of the
10 implications of nonparticipating nonparticipation on the student's course grade; How the
11 child's nonparticipation in the assessment will impact the child's] promotion[;]
12 graduation with a [basic modified standard,] standard[,] or advanced studies diploma[;] or
13 other matters.]

14 [c. A statement that the child shall participate in either the state assessment for all children
15 that is part of the state assessment program or the state's alternate assessment;

16 d. A statement of any individual accommodations or modifications approved for use in the
17 administration of division-wide assessments of student achievement that are needed in
18 order for the child to participate in the assessment;

19 e. If the IEP team determines that the child will not participate in a particular division-wide
20 assessment of student achievement (or part of an assessment), a statement of:

21 (1) Why that assessment is not appropriate for the child;

22 (2) How the child will be assessed;

23 (3) How the child's non participation in the assessment will impact the child's course,
24 promotion; graduation with a modified standard, standard, or advanced studies diploma;
25 or other matters.]

Virginia Special Education Regulations

1 ~~[d.f.]~~ For students still participating in the Literacy Passport Testing Program,
2 documentation that any decision to postpone or exempt the student from participation was
3 reviewed during the annual IEP review or sooner.

4 ~~d.~~ 6. The projected dates (month, day, and year) for initiation the beginning of the services
5 and modifications and the anticipated frequency, location, and duration of the those services
6 (month, day, and year) and modifications. Location refers to the continuum of alternative
7 placements in 8 VAC 20-80-64 B.

8 7. A statement of:

9 a. How the child's progress toward the annual goals will be measured;

10 b. How the child's parent or parents will be regularly informed (through such means as
11 periodic report cards), at least as often as the parent or parents are informed of [the
12 progress of] their children without [disabilities' progress, of disabilities, concerning]:

13 (1) Their child's progress toward the annual goals; and

14 (2) The extent to which that progress is sufficient to enable the child to achieve the goals
15 by the end of the year.

16 ~~e. Appropriate objective criteria and evaluation procedures and schedules for determining,~~
17 ~~at least annually, whether the short term instructional objectives are being achieved.~~

18 ~~f. For students beginning in the sixth grade, the following information concerning the~~
19 ~~Virginia Literacy Passport Testing Program must be included:~~

20 ~~(1) Whether the student will participate in the Literacy Passport Testing Program (a~~
21 ~~decision to exempt the student from participating must be reviewed during the annual IEP~~
22 ~~review or sooner);~~

23 ~~(2) Whether the student will postpone taking any of the literacy tests (a decision to~~
24 ~~postpone must be reviewed during the annual IEP review or sooner);~~

Virginia Special Education Regulations

1 ~~(3) Reasonable accommodations to take the literacy tests if the student needs them.~~

2 ~~The school division shall document on the IEP that the Literacy Passport Testing Program~~
3 ~~and the requirement that the student pass all of the literacy tests to receive a regular~~
4 ~~diploma have been presented to the parent.~~

5 [8. In the case of a preschool-aged child with a disability[,] age two (on or before September
6 30) through age five (on or before September 30), whose parent or parents elect to receive
7 services under Part B of the Individuals with Disabilities Education Act (20 USC §§ 1400
8 et[.]seq.), the local educational agency shall develop an IEP.]

9 ~~8.~~ 9. For each student with a disability, beginning at age 14 (or younger, if determined
10 appropriate by the IEP team), and updated annually, a statement of the transition service
11 needs of the student under the applicable components of the student's IEP that focuses on the
12 student's courses of study (such as participation in advanced-placement courses or a
13 vocational education program)[. For a student pursuing a modified standard diploma, the IEP
14 team shall consider the student's need for occupational readiness upon school completion,
15 including consideration of courses to prepare the student as a career and technical education
16 program completer; and]

17 ~~The IEP 9.~~ 10. For each student with a disability, beginning, beginning no later than at age
18 16 (and at a or younger age, if determined appropriate by the IEP team), must include a
19 statement of the needed transition services for the student, including, if appropriate, a
20 statement of each public agency's and each participating agency's interagency
21 responsibilities or any needed linkages, or both, before the student leaves the school setting.
22 The IEP must include the following areas Transition services shall be based on the individual
23 student's needs, taking into account the student's preferences and interests, and include:

24 ~~(a)~~ a. Instruction;

25 b. Related services;

Virginia Special Education Regulations

- 1 ~~(ii) c.~~ c. Community experiences;
- 2 ~~and (iii) d.~~ d. The development of employment and other post-school adult living objectives,
- 3 ~~unless the IEP committee determines that services are not needed in one or more of those~~
- 4 ~~areas. The IEP committee must then include a statement to that effect together with the~~
- 5 ~~basis for that determination in the IEP.; and~~
- 6 ~~h. A statement as to whether or not the student will participate in family life education.~~
- 7 e. If appropriate, acquisition of daily living skills and functional vocational evaluation.

8 ~~10.~~ 11. Beginning at least one year before a student reaches the age of majority, the student's
9 IEP must include a statement that the student has been informed of the rights under this
10 chapter, if any, that will transfer to the student on reaching the age of majority.

11 ~~[11. In the case of a child with a disability age two (on or before September 30) to age five~~
12 ~~(on or before September 30), an individualized family service plan may serve as and IEP if it~~
13 ~~meets the content and development requirements of an IEP. In implementing these~~
14 ~~requirements, the local educational agency shall:~~

- 15 ~~a. Provide to the child's parent or parents a detailed explanation of the differences between~~
16 ~~an IFSP and an IEP; and~~
- 17 ~~b. If the parent or parents choose an IFSP, obtain written informed consent from the parent~~
18 ~~or parents.]~~

19 ~~6.~~ G. Agency responsibilities for transition services.

20 ~~a.~~ 1. If a participating agency, other than the local educational agency, fails to provide
21 ~~[agreed upon the]~~ transition services contained described in the IEP of a student with a
22 ~~disability, the public agency responsible for the student's education~~ local educational agency
23 ~~shall, as soon as possible, initiate a meeting for the purpose of identifying alternative~~
24 ~~strategies to meet the transition objectives and, if necessary, revising the student's~~ reconvene

Virginia Special Education Regulations

1 the IEP team to identify alternative strategies to meet the transition objectives for the student
2 set out in the IEP.

3 ~~b. 2.~~ Nothing in this part relieves any participating agency, including a state vocational
4 rehabilitation agency, of the responsibility to provide or pay for any transition service that the
5 agency would otherwise provide to students with disabilities who meet the eligibility criteria
6 of that agency.

7 ~~7. Placements. Each LEA placing the child shall ensure that:~~

8 ~~a. The educational placement of each child with a disability:~~

9 ~~(1) Is determined at least annually;~~

10 ~~(2) Is based on his IEP; and~~

11 ~~(3) Is as close as possible to the child's home.~~

12 ~~b. The various alternative placements, discussed in 8 VAC 20-80-60 A 2 of this chapter,~~
13 ~~are available, to the extent necessary, to implement the IEP for each child with a disability.~~

14 ~~c. Unless a child with a disability's IEP requires some other arrangement, the child is~~
15 ~~educated in the school which he would attend if nondisabled.~~

16 ~~d. In selecting the least restrictive environment, consideration is given to any potential~~
17 ~~harmful effect on the child or on the quality of services which he needs.~~

18 ~~e. The placement decision shall include consideration of the child's social and personal~~
19 ~~needs, as well as the child's level of educational functioning.~~

20 ~~8. Private school placement.~~

21 ~~a. Before an LEA places a child with a disability in, or refers a child to, a private school or~~
22 ~~facility, the LEA shall initiate and conduct a meeting, in accordance with the preceding~~
23 ~~requirements, to develop an IEP for the child.~~

Virginia Special Education Regulations

1 ~~b. Where a child is presently receiving the services of a private school or facility, or where~~
2 ~~the parents and the LEA agree, prior to the development of an IEP that a private school or~~
3 ~~facility may be required when the IEP is completed, the LEA shall ensure that a~~
4 ~~representative of the private school or facility attends the meeting. If the representative~~
5 ~~cannot attend, the LEA shall use other methods to ensure participation by the private~~
6 ~~school or facility, including individual or conference telephone calls.~~

7 ~~c. After a child with a disability enters a private school or facility, any meetings to review~~
8 ~~and revise the child's IEP may be initiated and conducted by the private school or facility~~
9 ~~at the discretion of the LEA.~~

10 ~~d. If the private school or facility initiates and conducts these meetings, the LEA shall~~
11 ~~ensure that the parents and an LEA representative:~~

12 ~~(1) Are involved in any decision affecting the child's IEP; and~~

13 ~~(2) Agree to any proposed changes in the program before those changes are implemented.~~

14 ~~e. When a private school or facility implements a child's IEP, responsibility for compliance~~
15 ~~with this part remains with the LEA.~~

16 ~~f. Whenever an eligible child with a disability is placed in an approved private school or~~
17 ~~facility by an LEA, all rights extended to any child educated in public school programs~~
18 ~~shall be available to him.~~

19 ~~9. Children with disabilities in private schools not placed or referred by public agencies.~~

20 ~~a. If a child with a disability has available a free appropriate public education and the~~
21 ~~parents choose to place the child in a private school or facility, then the local school~~
22 ~~division is not required to pay for the child's education at the private school or facility.~~
23 ~~However, the local school division shall make services available to the child as follows:~~

Virginia Special Education Regulations

1 ~~(1) Each local school division shall provide special education and related services~~
2 ~~designed to meet the needs of private school children with disabilities residing in its~~
3 ~~jurisdiction;~~

4 ~~(2) Each local school division shall provide private school children with disabilities with~~
5 ~~genuine opportunities to participate in special education and related services consistent~~
6 ~~with the number of children and their needs.~~

7 ~~b. The needs of private school children with disabilities, the number who will participate,~~
8 ~~and the types of special education and related services which the local school division will~~
9 ~~provide for them must be determined after consultation with persons knowledgeable of the~~
10 ~~needs of these children on a basis comparable to that used in providing for the participation~~
11 ~~of children with disabilities enrolled in public schools.~~

12 ~~e. A local school division may provide special education and related services to private~~
13 ~~school children with disabilities which are different from the special education and related~~
14 ~~services it provides to public school children, if:~~

15 ~~(1) The differences are necessary to meet the special needs of the private school children~~
16 ~~with disabilities; and~~

17 ~~(2) The special education and related services are comparable in quality, scope, and~~
18 ~~opportunity for participation to those provided to public school children with needs of~~
19 ~~equal importance.~~

20 ~~d. Each LEA providing services to children enrolled in private schools shall maintain~~
21 ~~continuing administrative control and direction over those services.~~

22 ~~10. Children with disabilities on homebound instruction. Homebound instruction shall be~~
23 ~~deemed appropriate for a child with a disability only when such placement is stipulated in the~~
24 ~~child's IEP and is in accordance with the requirements of the least restrictive environment.~~

25 ~~11. Suspension or expulsion of children with disabilities.~~

Virginia Special Education Regulations

1 ~~a. Suspensions of 10 days or less. A short term suspension is when the child is removed~~
2 ~~from class (i.e., an in-school suspension) or school for less than 10 school days. It does not~~
3 ~~constitute a change in placement. The child is subject to normal disciplinary procedures~~
4 ~~whether or not there is a causal connection between the child's disability and the~~
5 ~~misconduct.~~

6 ~~b. Long term suspensions greater than 10 days and expulsions.~~

7 ~~(1) When the child is removed from class or school for more than 10 consecutive school~~
8 ~~days, a determination must be made as to whether or not there is a direct causal~~
9 ~~relationship between the child's disability and the misconduct.~~

10 ~~(2) This determination must be made pursuant to the change in placement procedures by~~
11 ~~a committee with the following composition:~~

12 ~~(a) A representative of the LEA, other than the child's teacher, who is qualified to~~
13 ~~provide or supervise the provision of special education;~~

14 ~~(b) The child's teacher;~~

15 ~~(c) One or both of the child's parents;~~

16 ~~(d) The child, if appropriate;~~

17 ~~(e) Persons knowledgeable about the child, the meaning of the evaluation data, and the~~
18 ~~placement options;~~

19 ~~(f) Other individuals, at the discretion of the parents or LEA.~~

20 ~~(3) A series of suspensions which aggregate to more than 10 days may be considered a~~
21 ~~significant change in placement requiring reevaluation and procedural protections.~~
22 ~~Factors to consider in determining whether aggregate suspensions of greater than 10 days~~
23 ~~are long term suspensions include length of each suspension, proximity of suspensions,~~
24 ~~and total amount of time suspended.~~

Virginia Special Education Regulations

1 ~~(4) If there is a causal connection or if the child was inappropriately placed at the time of~~
2 ~~the misconduct, the child may not be expelled, nor may the LEA impose a long term~~
3 ~~suspension. If there is no causal connection or if the child was appropriately placed at the~~
4 ~~time of the misconduct, the child may be disciplined the same as a nondisabled child.~~

5 ~~(5) In the case of an expulsion or long term suspension, parental consent is not required.~~

6 ~~e. Dangerous student with a disability. LEAs may not unilaterally change the placement of~~
7 ~~a student with dangerous behavior when the misconduct is caused by the disability. LEAs,~~
8 ~~however, may use normal disciplinary measures for a child who exhibits dangerous~~
9 ~~behavior to include, for example, time outs or suspension up to 10 days. An LEA may only~~
10 ~~impose an expulsion or long term suspension on a student with a disability whose~~
11 ~~misconduct has been determined to be caused by his disability by obtaining an injunction,~~
12 ~~based on dangerousness of the student, from a court of competent jurisdiction.~~

13 ~~12. Assistive technology. Each LEA shall ensure that assistive technology devices or~~
14 ~~assistive technology services, or both, are made available to a child with a disability if~~
15 ~~required as part of the child's:~~

16 ~~a. Special education;~~

17 ~~b. Related services; or~~

18 ~~c. Supplementary aids and services.~~

19 ~~C. Educational interpreting services.~~

20 ~~1. Educational personnel providing interpreting services for students using sign language~~
21 ~~shall have achieved a Virginia Quality Assurance Screening Level III or hold any Registry of~~
22 ~~Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation).~~

23 ~~2. Educational personnel providing interpreting services for students using cued speech shall~~
24 ~~have achieved a Virginia Quality Assurance Screening Cued Speech Level III or National~~
25 ~~Cued Speech Association Cued Speech Transliterator Certificate.~~

Virginia Special Education Regulations

1 ~~3. Educational personnel providing interpreting services for students requiring oral~~
2 ~~interpreting shall have met Virginia Quality Assurance Screening's minimum requirements~~
3 ~~for competency on the Registry of Interpreters for the Deaf Code of Ethics.~~

4 ~~4. An individual providing interpreting services for students using sign language or cued~~
5 ~~speech who does not hold the required Virginia Quality Assurance Screening level or~~
6 ~~Registry of Interpreters for the Deaf certificate (excluding certificate in reverse skills) or a~~
7 ~~National Cued Speech Association Cued Speech Transliterator Certificate may be employed~~
8 ~~according to all of the following criteria:~~

9 ~~a. The individual must have a Virginia Quality Assurance Screening Level I upon hiring~~
10 ~~date in any local education agency or state operated program in Virginia (or the~~
11 ~~implementation date of this chapter, whichever is later). The local education agency/state~~
12 ~~operated program shall inform the Department of Education of the person's name, social~~
13 ~~security number and hiring date;~~

14 ~~b. Each individual must achieve Level III Virginia Quality Assurance Screening or any~~
15 ~~Registry of Interpreters for the Deaf Certificate (excluding certification in reverse skills) or~~
16 ~~a National Cued Speech Association Cued Speech Transliterator Certificate by the third~~
17 ~~anniversary date of hiring in any local education agency or state operated program (or~~
18 ~~implementation date of this chapter, whichever is later); and~~

19 ~~c. The local education agency/state operated program shall annually submit a professional~~
20 ~~development plan to the Virginia Department of Education on behalf of the individual.~~

21 ~~[F. H.] Additional requirements for eligible students with disabilities in state, regional, or local~~
22 ~~adult or juvenile correctional facilities.~~

23 ~~1. A representative of the state from a state, regional, or local adult or juvenile correctional~~
24 ~~facility may participate as a member of the IEP team.~~

Virginia Special Education Regulations

1 2. All requirements in this section apply to students with disabilities in state, regional[,] or
2 local adult or juvenile correctional facilities with the exception that the IEP team of a student
3 with disabilities who is convicted as an adult under state law may modify the student's IEP or
4 placement if the state has demonstrated[;] to the IEP team[;] a bona fide security or
5 compelling penological interest that cannot be otherwise accommodated.

6 a. All requirements regarding IEP [development, review, and] revision in this section shall
7 apply.

8 b. If such modifications are made by the IEP team, the requirements related to least
9 restrictive environment in 8 VAC 20-80-64 do not apply.

10 c. IEP requirements regarding participation in statewide state [assessment systems
11 assessments], including alternate [assessment systems assessments], do not apply.
12 Assessment requirements for graduation to graduate with a [modified standard,] standard[,]
13 or advanced studies diploma shall apply.

14 d. ~~Provision of~~ IEP requirements regarding transition planning and transition services do
15 not apply ~~for~~ to students whose eligibility for special education and related services will
16 end because of their age before they will be eligible for release [from the correctional
17 facility] based on consideration of their sentence and their eligibility for early release.

18 8 VAC 20-80-64. Least restrictive environment and placements.

19 A. General least restrictive environment requirements.

20 1. Each local educational agency shall ensure:

21 a. That to the maximum extent appropriate, children with disabilities, including those in
22 public or private institutions or other care facilities, are educated with children without
23 disabilities; and

24 b. That special classes, separate schooling[,] or other removal of children with disabilities
25 from the regular educational environment occurs only if the nature or severity of the

Virginia Special Education Regulations

1 disability is such that education in regular classes with the use of supplementary aids and
2 services cannot be achieved satisfactorily.

3 2. In providing or arranging for the provision of nonacademic and extracurricular services
4 and activities, including meals, recess periods, and other services and activities provided for
5 children without disabilities, each local educational agency shall ensure that each child with a
6 disability participates with children without disabilities in those services and activities[;] to
7 the maximum extent appropriate to the needs of the child with a disability.

8 3. For children placed by local school divisions in public or private institutions, the local
9 educational agency shall, where necessary, make arrangements with public and private
10 institutions to ensure that requirements for least restrictive environment are met. (See also
11 [private school placements in] 8 VAC 20-80-66.)

12 B. Continuum of alternative placements.

13 1. Each local educational agency shall ensure that a continuum of alternative placements is
14 available to meet the needs of children with disabilities for special education and related
15 services.

16 2. The continuum must:

17 a. Include the alternative placements listed in the definition of special education
18 (instruction in regular classes[;] special classes[;] special schools[;] home-based
19 instruction[; and] instruction in hospitals and institutions, ~~and~~ including Woodrow Wilson
20 Rehabilitation Center and other state facilities); and

21 b. Make provision for supplementary [resource] services (e.g., resource room or services or
22 itinerant instruction) to be provided in conjunction with regular class placement. The
23 continuum should include integrated service delivery, [that is where which occurs when]
24 some or all goals[, including benchmarks] and objectives[,] of the student's [individualized

Virginia Special Education Regulations

1 education program IEP] are met in the general education setting with age-appropriate
2 peers.

3 3. No single model for the delivery of services to any specific population or category of
4 children with disabilities will be acceptable for meeting the requirement for a continuum of
5 alternative placements [(e.g., Level I services as the only option for children who need Level
6 H or a separate facility as the only alternative placement for students with disabilities).] All
7 placement decisions must be based on the individual needs of each child.

8 4. Local educational agencies shall document fully all alternatives considered and the
9 rationale for choosing the selected placement.

10 5. Children with disabilities must be served in a program with age-appropriate peers [(e.g.,
11 secondary age children shall be placed in a secondary school and elementary age children
12 shall be placed in an elementary school)] unless it can be shown that for a particular child
13 with a disability[,] the alternative placement is appropriate as documented by the IEP.

14 C. Placements.

15 1. In determining the educational placement of a child with a disability, including a preschool
16 child with a disability, each local educational agency shall ensure that:

17 a. The placement decision is[:

18 (1) Made by a group of persons, including the parents, and other persons knowledgeable
19 about the child, the meaning of the evaluation data, and the placement options; and

20 (2) Made] made by the IEP team in conformity with the least restrictive environment
21 provisions of this chapter.

22 b. The child's placement is:

23 (1) Determined at least annually;

24 (2) Based on the child's IEP; and

Virginia Special Education Regulations

1 (3) As close as possible to the child's home.

2 c. Unless the IEP of a child with a disability requires some other arrangement, the child is
3 educated in the school that the child would attend if ~~not~~ a child ~~with~~ without] a
4 disability.

5 d. In selecting the least restrictive environment, consideration is given to any potential
6 harmful effect on the child or on the quality of services which the child needs.

7 e. A child with a disability is not removed from education in age-appropriate regular
8 classrooms solely because of needed modifications in the general curriculum.

9 2. [~~Children with disabilities on home-based instruction.~~] Home-based instruction shall be
10 made available to ~~students~~ children] whose IEPs require the delivery of services in the
11 home or other agreed-upon setting.

12 3. [~~Children with disabilities on homebound instruction.~~] Homebound instruction shall be
13 made available to ~~students~~ children] who are confined for periods that would prevent normal
14 school attendance based upon certification of need by a licensed physician or clinical
15 psychologist. For students eligible for special education and related services, the IEP team
16 must revise the IEP, as appropriate, and determine the delivery of homebound services,
17 including the number of hours of services.

18 [8 VAC 20-80-65. Placement of children at the Virginia School for the Deaf and the Blind at
19 Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

20 A. Placements shall be made by the local school division, in accordance with the
21 administrative policies and procedures of the Virginia School for the Deaf and the Blind at
22 Staunton or the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton ("Virginia
23 schools"). The Virginia schools shall determine if the student meets the admission criteria of the
24 Virginia schools.

Virginia Special Education Regulations

1 B. When an eligible child is placed in the Virginia schools, the local school divisions shall be
2 responsible for ensuring compliance with the requirements of this chapter.

3 C. A contractual agreement shall be established between the Virginia schools and the local
4 school division for each child enrolled in the Virginia schools.

5 1. This agreement shall include, but not be limited to:

6 a. The educational services provided by each party;

7 b. The responsibility for development of IEPs;

8 c. The responsibility for completing evaluations and determining continuing eligibility for
9 special education and related services; and

10 d. The responsibility for providing procedural safeguards and a free appropriate public
11 education.

12 2. The Virginia schools and the local school divisions shall review the contractual agreement
13 at least annually and revise it as necessary.

14 3. For students who are residential students, the respective Virginia school is responsible for
15 transportation. For students who are day students, the placing local school division is
16 responsible for transportation to and from the school.]

17 8 VAC 20-80-66. Private school placement.

18 A. Private school placement by a local school division or Comprehensive Services Act team.

19 1. ~~Whenever an eligible~~ When a child with a disability] is placed ~~[in a private school that is~~
20 ~~licensed or has a certificate to operate or facility]~~ by a local school division or is placed for
21 non-educational reasons by a Comprehensive Services Act team that includes ~~[that the]~~
22 school division ~~[under Chapter 46 (§ 2.1-745 et seq.) of Title 2.1 of the Code of Virginia, in a~~
23 private special education school or facility that is licensed or has a certificate to operate,] the
24 local school division shall be responsible for ensuring compliance with the requirements of

Virginia Special Education Regulations

1 this chapter, including participation in [state-wide state] and division-wide assessments. The
2 local school division shall not be responsible for ensuring compliance with the least
3 restrictive education requirements of this chapter for children placed for non-educational
4 reasons by a Comprehensive Services Act team.

5 2. Before a local school division places a child with a disability in a private special education
6 school [or facility] that is licensed or has a certificate to operate [or facility], the local school
7 division shall initiate and conduct a meeting[5] in accordance with [the preceding
8 requirements section 8 VAC 20-80-62 of this chapter], to develop an IEP for the child. The
9 local school division shall ensure that a representative of a private special education school or
10 facility attends the meeting. If the representative cannot attend, the agency shall use other
11 methods to ensure participation by a private school or facility, including individual or
12 conference telephone calls.

13 3. [Where When] a child is presently receiving the services of a private [special education]
14 school [or facility] that is licensed or has a certificate to operate [or facility], the local school
15 division shall ensure that a representative of the private [special education] school or facility
16 attends the meeting. If the representative cannot attend, the local school division shall use
17 other methods to ensure participation by the private school or facility, including individual or
18 conference telephone calls.

19 4. After a child with a disability enters a private [special education] school or facility [that is
20 licensed or has a certificate to operate], any meetings to review and revise the child's IEP
21 may be initiated and conducted by the private school or facility at the discretion of the local
22 school division.

23 5. If the private special education school or facility initiates and conducts these meetings, the
24 local school division shall ensure that the parent or parents and a local school division
25 representative:

26 a. Are involved in any decision affecting the child's IEP;

Virginia Special Education Regulations

1 b. Agree to any proposed changes in the program before those changes are implemented;
2 and

3 c. Are involved in any meetings that are held regarding reevaluation.

4 6. ~~Even if a~~ If] the private special education school or facility implements a child's IEP,
5 responsibility for compliance with the requirements regarding procedural safeguards, IEPs,
6 assessment, reevaluation, and termination of services remains with the local school division.

7 7. ~~Whenever~~ When] a child with a disability is placed [by a local school division or a
8 Comprehensive Services Act team] in ~~[an approved]~~ a private [special education] school or
9 facility ~~[by a local school division or a Comprehensive Services Act team]~~ that is licensed or
10 has a certificate to operate], all rights and protections ~~[extended to any child with disabilities]~~
11 under this chapter shall be ~~[available]~~ extended] to the child.

12 [8. If the parent or parents request a due process hearing to challenge the child's removal
13 from a placement that was made for non-educational reasons by a Comprehensive Services
14 Act team, the child shall remain in the previous IEP placement agreed upon by the parent or
15 parents and the local educational agency prior to placement by the Comprehensive Services
16 Act team.]

17 ~~[8. Whenever an eligible~~ 9. When] a child with a disability is placed in ~~[an approved]~~ a
18 private special education school or facility that is ~~[out-of-state]~~ out-of-state], the placement
19 shall be processed through the Interstate Compact on the Placement of Children, ~~[as provided~~
20 by in accordance with] the Code of Virginia.

21 B. Placement of children by parents if a free appropriate public education is at issue.

22 1. This section does not require a local school division to pay for the cost of education,
23 including special education and related services, of a child with a disability at a private
24 school or facility if the local school division made a free appropriate public education

Virginia Special Education Regulations

1 available to the child and the parent or parents elected to place the child in a private school or
2 facility.

3 2. Disagreements between a parent or parents and a local school division regarding the
4 availability of an appropriate program for the child[;] and the question of financial
5 responsibility[;] are subject to the due process procedures of 8 VAC 20-80-76.

6 3. ~~[Reimbursement for private school placement.]~~ If the parent or parents of a child with a
7 disability, who previously received special education and related services under the authority
8 of a local school division, enroll the child in a private preschool, elementary, middle, or
9 secondary school without the consent of or referral by the local school division, a court or a
10 hearing officer may require the ~~[agency local school division]~~ to reimburse the parent or
11 parents for the cost of that enrollment if the court or hearing officer finds that the local school
12 division had not made a free appropriate public education available to the child in a timely
13 manner prior to that enrollment and that the private placement is appropriate. A parental
14 placement may be found to be appropriate by a hearing officer or a court even if it does not
15 meet the standards of the Virginia Department of Education that apply to education provided
16 by the Virginia Department of Education and ~~[provided by]~~ the local school division.

17 4. ~~[Limitation on reimbursement.]~~ The cost of reimbursement described in this section may
18 be reduced or denied ~~[if]~~:

19 a. ~~[At If: (i) at]~~ the most recent IEP meeting that the parent or parents attended prior to
20 removal of the child from the public school, the parent or parents did not inform the IEP
21 team that they were rejecting the placement proposed by the local school division to
22 provide a free appropriate public education to their child, including stating their concerns
23 and their intent to enroll their child in a private school at public expense; or ~~[b. At (ii) at]~~ at
24 least 10 business days (including any holidays that occur on a business day) prior to the
25 removal of the child from the public school, the parent or parents did not give written
26 notice to the local school division of the information described above; ~~[and]~~

Virginia Special Education Regulations

1 [e. b.] If, prior to the parent's or parents' removal of the child from the public school, the
2 local school division informed the parent or parents, through the notice requirements
3 described in 8 VAC 20-80-76, of its intent to evaluate the child (including a statement of
4 the purpose of the evaluation that was appropriate and reasonable), but the parent or
5 parents did not make the child available for the evaluation; or

6 [d. c.] Upon a judicial finding of unreasonableness with respect to actions taken by the
7 parent or parents.

8 5. Notwithstanding the above notice requirement, the cost of reimbursement may not be
9 reduced or denied for the parent's or parents' failure to provide the notice to the local school
10 division if:

11 a. The parent is illiterate or cannot write in English;

12 b. Compliance with this section would likely result in physical or serious emotional harm
13 to the child;

14 c. The school prevented the parent or parents from providing the notice; or

15 d. The parent or parents had not received notice of the notice requirement in this section.

16 C. Child find for private school, ~~and home-instructed~~ home-instructed], and [home-tutored]
17 children with disabilities.

18 1. Each local school division shall locate, identify, and evaluate all private school children
19 with disabilities, including children attending religious schools, ~~residing~~ who reside] in the
20 jurisdiction of the local school division. The provisions of this subsection shall apply to
21 children who are home instructed and home tutored in accordance with the Code of Virginia.
22 The activities undertaken to carry out this responsibility for private school children with
23 disabilities must be comparable to activities undertaken for children with disabilities in
24 public schools.

Virginia Special Education Regulations

1 2. Each local school division shall consult with appropriate representatives of private school
2 children with disabilities on how to carry out the child find activities.

3 D. Placement of children by parents when a free appropriate public education is not at issue.
4 To the extent consistent with their number and location in the state, provision must be made for
5 the participation of private school children with disabilities in the program carried out under the
6 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) by providing them with
7 special education and related services in accordance with a services plan developed and
8 implemented under this subsection.

9 1. The provisions of this subsection shall apply to children who are [~~home-instructed~~ home-
10 instructed or home-tutored] in accordance with the Code of Virginia.

11 2. Each local school division shall ensure that a services plan is developed and implemented
12 for each private school child with a disability who has been designated to receive special
13 education and related services under this part.

14 3. Expenditures.

15 a. To meet the requirement of [the] Individuals with Disabilities Education Act (20 USC §§
16 1400 et seq.), each local school division must spend the following on providing special
17 education and related services to private school children with disabilities:

18 (1) For children[,] aged three to 21, inclusive, an amount that is the same proportion of
19 the local school division's total subgrant under the Individuals with Disabilities
20 Education Act (20 USC §§ 1400 et seq.) as the number of private school children with
21 disabilities[,] aged three to 21, inclusive, residing in its jurisdiction is to the total number
22 of children with disabilities in its jurisdiction aged three to 21, inclusive[;] and

23 (2) For children[,] aged three to five, inclusive, an amount that is the same proportion of
24 the local school division total subgrant under the [~~Act~~ act] as the number of private
25 school children with disabilities, aged three to five, inclusive, residing in its jurisdiction,

Virginia Special Education Regulations

1 is to the total number of children with disabilities in its jurisdiction[,] aged three to five,
2 inclusive.

3 b. Each local school division shall consult with representatives of private school children in
4 deciding how to conduct the annual count of the number of private school children with
5 disabilities and ensure that the count is conducted on December 1. The child count must be
6 used to determine the amount that the local school division must spend on providing
7 special education and related services to private school children with disabilities in the
8 subsequent fiscal year.

9 c. Expenditures for child find activities, including evaluation and eligibility, described in
10 8 VAC 20-80-50 through 8VAC 20-80-56, may not be considered in determining whether
11 the local [educational agency school division] has met the expenditure requirements of the
12 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

13 d. Local school divisions are not prohibited from providing services to private school
14 children with disabilities in excess of those required by this section.

15 4. Services determined.

16 a. No private school child with a disability has an individual right to receive some or all of
17 the special education and related services that the child would receive if enrolled in a
18 public school. Decisions about the services that will be provided to private school children
19 with disabilities, must be made in accordance with subdivisions 4 b and c of this
20 subsection.

21 b. Consultation with representatives of private school children with disabilities.

22 (1) Each local school division shall consult, in a timely and meaningful way, with
23 appropriate representatives of private school children with disabilities in light of the
24 funding, the number of private school children with disabilities, the needs of private
25 school children with disabilities, and their location to decide (i) which children will

Virginia Special Education Regulations

1 receive services; (ii) what services will be provided; (iii) how and where the services will
2 be provided; and (iv) how the services provided will be evaluated.

3 (2) Each local school division shall give appropriate representatives of private school
4 children with disabilities a genuine opportunity to express their views regarding each
5 matter that is subject to the consultation requirements in this section.

6 (3) The consultation required by this section must occur before the local school division
7 makes any decision that affects the opportunities of private school children with
8 disabilities to participate in services.

9 (4) The local school division shall make the final decisions with respect to the services to
10 be provided to eligible private school children.

11 c. Services plan for each child served under this section. If a child with a disability is
12 enrolled in a religious or other private school and will receive special education or related
13 services from a local school division, the local school division shall[:]

14 [(1)] ~~initiate~~ Initiate] and conduct meetings to develop, review, and revise a services plan
15 for the child; and

16 [(2)] ~~ensure~~ Ensure] that a representative of the religious or other private school attends
17 each meeting. If the representative cannot attend, the local school division shall use other
18 methods to ensure participation by the private school, including individual or conference
19 telephone calls.

20 5. Services provided.

21 a. The services provided to private school children with disabilities must be provided by
22 personnel meeting the same standards as personnel providing services in the public
23 schools.

24 b. Private school children with disabilities may receive a different amount of services than
25 children with disabilities in public schools.

Virginia Special Education Regulations

1 c. No private school child with a disability is entitled to any service or to any amount of a
2 service the child would receive if enrolled in a public school.

3 d. Services provided in accordance with a services plan.

4 (1) Each private school child with a disability who has been designated to receive
5 services under this subsection must have a services plan that describes the specific special
6 education and related services that the local school division will provide to the child in
7 light of the services that the local school division has determined it will make available to
8 private school children with disabilities.

9 (2) The services plan must, to the extent appropriate, meet the requirements for the
10 content of the IEP (8 VAC 20-80-62 F) with respect to the services provided, and be
11 developed, reviewed, and revised consistent with 8 VAC 20-80-62 B 1, B 2, B 3, B 4, C,
12 D, and E.

13 6. Location of services. Services provided to [a] private school [~~children~~ child] with
14 [~~disabilities~~ a disability] may be provided on-site at [a the] child's private school, including a
15 religious school, to the extent consistent with law.

16 7. Transportation.

17 a. If necessary for the child to benefit from or participate in the services provided under this
18 part, a private school child with a disability must be provided transportation:

19 (1) From the child's school or the child's home to a site other than the private school; and

20 (2) From the service site to the private school[;] or to the child's home[;]depending on the
21 timing of the services.

22 b. Local school divisions are not required to provide transportation from the child's home
23 to the private school.

Virginia Special Education Regulations

1 c. The cost of the transportation described in this subsection may be included in calculating
2 whether the local school division has met the requirement of this section.

3 8. Procedural safeguards, due process, and complaints.

4 a. Due process inapplicable. The procedures relative to procedural safeguards, consent,
5 mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to
6 complaints that a local school division has failed to meet the requirements of this
7 subsection, including the provision of services indicated on the child's services plan.

8 b. Due process applicable. The procedures relative to procedural safeguards, consent,
9 mediation, due process hearings, attorneys' fees, and surrogate parents do apply to
10 complaints that a local school division has failed to meet the requirements of child find
11 (including the requirements of referral for evaluation, evaluation[,] and eligibility) for
12 private school children with disabilities (subsection C of this section).

13 c. State complaints. Complaints that the Virginia Department of Education or local school
14 division has failed to meet the requirements of this section may be filed under the
15 procedures in 8 VAC 20-80-78.

16 9. Separate classes prohibited. A local school division may not use funds available under the
17 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) for classes that are
18 organized separately on the basis of school enrollment or religion of the students if (i) the
19 classes are at the same site; and (ii) the classes include students enrolled in public schools
20 and students enrolled in private schools.

21 10. Requirement that funds not benefit a private school. A local school division may not use
22 funds provided under the Individuals with Disabilities Education Act (20 USC §§ 1400 et
23 seq.) to finance the existing level of instruction in a private school or to otherwise benefit the
24 private school. The local school division shall use funds provided under the Individuals with
25 Disabilities Education Act (20 USC §§ 1400 et seq.) to meet the special education and related

Virginia Special Education Regulations

1 services needs of students enrolled in private schools, but not for the needs of a private
2 school or the general needs of the students enrolled in the private school.

3 11. Use of public school personnel. A local school division may use funds available under
4 the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to make public
5 school personnel available in nonpublic facilities to the extent necessary to provide services
6 under this section for private school children with disabilities and if those services are not
7 normally provided by the private school.

8 12. Use of private school personnel. A local school division may use funds available under
9 the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to pay for the
10 services of an employee of a private school to provide services to a child enrolled in private
11 school by the child's parent or parents, if the employee performs the services outside of the
12 employee's regular hours of duty; and the employee performs the services under public
13 supervision and control.

14 13. Requirements concerning property, equipment, and supplies for the benefit of private
15 school children with disabilities.

16 a. A local school division must keep title to and exercise continuing administrative control
17 of all property, equipment, and supplies that the [public agency local school division]
18 acquires with funds under the Individuals with Disabilities Education Act (20 USC §§ 1400
19 et seq.) for the benefit of private school children with disabilities.

20 b. The local school division may place equipment and supplies in a private school for the
21 period of time needed for the program.

22 c. The local school division shall ensure that the equipment and supplies placed in a private
23 school are used only for purposes of special education and related services for children
24 with disabilities and can be removed from the private school without remodeling the
25 private school facility.

Virginia Special Education Regulations

1 d. The local school division shall remove equipment and supplies from a private school if
2 (i) the equipment and supplies are no longer needed for purposes of special education and
3 related services for children with disabilities or (ii) removal is necessary to avoid
4 unauthorized use of the equipment and supplies for ~~other than~~ purposes ~~of other than~~
5 special education and related services for children with disabilities.

6 e. No funds under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.)
7 may be used for repairs, minor remodeling, or construction of private school facilities.

8 8 VAC 20-80-68. Discipline procedures.

9 [A. General. A student with a disability shall be entitled to the same due process rights that all
10 students are entitled to under the Code of Virginia and the local educational agency's
11 disciplinary policies and procedures.]

12 [A. B.] Short-term removals.

13 1. A student with a disability may be removed from the student's current educational setting
14 up to 10 cumulative school days in a school year for any violation of school rules to the
15 extent removal would be applied to ~~students a student~~ without ~~disabilities a disability~~].

16 ~~[2. A student with a disability is entitled to the same due process rights that all students are~~
17 ~~entitled to under the school division's disciplinary policies and procedures.~~

18 2. A student with a disability may be removed from the student's current educational setting
19 for a period of time that cumulatively exceeds 10 school days in a school year for separate
20 incidents of misconduct as long as the removals do not constitute a pattern. If the removals
21 do constitute a pattern, the requirements of subdivision C of this section apply.

22 a. Isolated, short-term suspensions for unrelated instances of misconduct may not be
23 considered a pattern.

24 b. These removals do not constitute a change in placement.]

Virginia Special Education Regulations

1 ~~[B. C.]~~ Long-term removals.

2 1. For purposes of removals of a student with a disability from the student's current
3 educational placement, a change in placement occurs if:

4 a. The removal is for more than 10 consecutive school days; or

5 b. ~~[The student receives a A]~~ series of removals ~~[that constitute constitutes]~~ a pattern
6 because[;:

7 ~~(1) The the]~~ removals cumulate to more than 10 school days in a school year[;] and

8 ~~[(2) The removals involve such~~ because of] factors as the length of each removal, the
9 total amount of time the student is removed, and the proximity of the removals to one
10 another.

11 ~~[c. A student with a disability may be removed for a period of time that cumulatively~~
12 ~~exceeds 10 school days in a given school year for separate accounts of misconduct as long~~
13 ~~as the removals do not constitute a pattern.~~

14 ~~(1) Isolated, short term suspensions for unrelated instances of misconduct may not be~~
15 ~~considered a pattern.~~

16 ~~(2) These removals do not constitute a change in placement.]~~

17 2. Authority of school personnel.

18 a. A student with a disability may be removed consistent with subdivision 1 of this
19 subsection for any violation of school rules to the extent removal would be applied to
20 students without disabilities.

21 b. School personnel may remove a student with a disability to an appropriate interim
22 alternative educational setting for the same amount of time that a ~~[child~~ student] without a
23 disability would be subject to discipline, but ~~[not]~~ for [not] more than 45 calendar days, if:

Virginia Special Education Regulations

1 (1) The student carries a weapon to or possesses a weapon at school or a school function
2 under the jurisdiction of ~~the~~ a local educational agency or the Virginia Department of
3 Education; or

4 (2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a
5 controlled substance while at school or a school function under the jurisdiction of ~~the~~ a
6 local educational agency or the Virginia Department of Education. For purposes of this
7 part, the following definitions apply:

8 (a) Controlled substance means a drug or other substance identified under schedules I,
9 II, III, IV, or V in § 202(c) of the Controlled Substances Act at 21 USC § 812 (c).

10 (b) Illegal drug means a controlled substance, but does not include a substance that is
11 legally possessed or used under the supervision of a licensed health-care professional or
12 that is legally possessed or used under any other authority under the Controlled
13 Substances Act or under any other provision of federal law.

14 (c) Weapon has the meaning given the term “dangerous weapon” in 18 USC § 930 (g),
15 paragraph 2, as well as any ~~other provisions of~~ weapon defined as a dangerous weapon
16 in] the Code of Virginia.

17 c. The interim alternative educational setting must be determined by an IEP team. The
18 interim alternative educational setting must be selected so as to enable the student to:

19 (1) Continue to progress in the general curriculum, although in another setting;

20 (2) Continue to receive those services and modifications including those described in the
21 student’s current IEP[⁵] that will enable the student to meet the IEP goals; and

22 (3) Include services and modifications that address the behavior and are designed to
23 prevent the behavior from recurring.

24 d. The local educational agency shall ensure that the following procedures are implemented
25 either before or not later than 10 business days after either first removing the student for

Virginia Special Education Regulations

1 more than 10 school days in a school year[;] or commencing a removal that constitutes a
2 change in placement under subdivision 1 of this subsection, including placements in
3 interim alternative educational settings:

4 (1) The IEP team shall convene to develop a behavioral assessment plan if the local
5 educational agency did not conduct a functional behavioral assessment and implement a
6 behavioral plan for the student before the behavior resulted in the removal described in
7 subdivision 1 of this subsection.

8 (2) The functional behavioral assessment may be a review of existing data that can be
9 completed at the IEP meeting. Parental consent is not necessary to review existing data.

10 ~~(2)~~ (3) The IEP team shall reconvene as soon as practicable after developing the
11 assessment plan and completing the assessments required by the plan. The IEP team shall
12 develop and implement appropriate behavioral interventions to address the behavior.

13 ~~(3)~~ (4) If the student had a behavioral intervention plan before engaging in the behavior,
14 the IEP team shall convene to review the plan and its implementation, and modify the
15 plan and its implementation, as necessary, to address the behavior.

16 e. If the student who has a behavioral intervention plan and who has been removed from
17 the student's current educational placement for more than 10 school days in a school year
18 is subjected to a further removal that does not constitute a change in placement under
19 subdivision 1 of this subsection[,] the IEP team shall review the behavioral intervention
20 plan and its implementation to determine if modifications are necessary. If one or more of
21 the team members [believes believe] that modifications are needed in the student's
22 behavioral intervention plan, the IEP team shall meet and modify the plan and its
23 implementation as necessary.

24 3. Services during periods of disciplinary removal.

Virginia Special Education Regulations

1 a. The local educational agency is not required to provide services during the first 10
2 school days in a school year that a student with a disability is removed from the student's
3 current educational setting if services are not provided to ~~students~~ a student] without
4 ~~disabilities~~ a disability] who ~~have~~ has] been similarly removed.

5 ~~b. A student with a disability is entitled to the same due process rights that all students are~~
6 ~~entitled to under the school division's disciplinary policies and procedures.]~~

7 ~~e.b.] For a subsequent removal that is less than 10 school days in a school year, but~~
8 ~~exceeds 10 cumulative school days of removal, and which does not constitute a change in~~
9 ~~placement under subdivision 1 of this subsection, the local educational agency shall~~
10 ~~provide services to the extent determined necessary to enable the student to appropriately~~
11 ~~progress in the general curriculum and appropriately advance toward achieving the goals of~~
12 ~~the student's IEP.~~

13 ~~d.c.] The procedures for determining services under subdivision 3 [e b] of this subsection~~
14 ~~for periods of removals are as follows:~~

15 (1) For removals for more than 10 school days in a school year which do not constitute a
16 change in placement, school personnel, in consultation with the student's special
17 education teacher, make the service determinations.

18 (2) For removals that constitute a change in placement, the IEP team determines what
19 services are needed.

20 4. Authority of the hearing officer.

21 a. A local educational agency may request an expedited due process hearing under the
22 Virginia Department of Education's due process hearing procedures to effect a change in
23 placement of a student with a disability for not more than 45 calendar days if the local
24 educational agency believes that the student's behavior is likely to result in injury to self or
25 others. This procedure may be repeated as necessary.

Virginia Special Education Regulations

1 b. The hearing officer under 8 VAC 20-80-76 may order a change in the placement to an
2 appropriate interim alternative educational setting for not more than 45 calendar days if the
3 local educational agency has demonstrated by substantial evidence (beyond a
4 preponderance of the evidence) that maintaining the current placement of the student is
5 substantially likely to result in injury to the student or others. The hearing officer must:

6 (1) Consider the appropriateness of the student's current placement;

7 (2) Consider whether the local educational agency has made reasonable efforts to
8 minimize the risk of harm in the student's current placement, including the use of
9 supplementary aids and services; and

10 (3) Determine that the interim alternative educational setting that is proposed by school
11 personnel who have consulted with the student's special education teacher[.] meets the
12 requirements of subdivision 2 c of this subsection.

13 c. A local educational agency may ask the hearing officer for an extension of 45 calendar
14 days for the interim alternative educational setting of a student with a disability when
15 school personnel believe that the student's return to the regular placement would be
16 dangerous to the student or others.

17 5. Manifestation determination.

18 a. Manifestation determinations are required if the local educational agency is
19 contemplating a removal that constitutes a change in placement, including removal to an
20 interim alternative educational setting, for a student with a disability who has violated any
21 rule or code of conduct of the local educational agency that applies to all students. The
22 local educational agency shall notify the parent or parents of that decision and provide the
23 parent or parents with the procedural safeguards notice not later than the date on which the
24 decision to take the action is made.

Virginia Special Education Regulations

1 b. The IEP team and other qualified personnel shall convene immediately, if possible, but
2 not later than 10 school days after the date on which the decision to take the action is made.
3 The other qualified personnel may include individuals who are knowledgeable about how a
4 [child's student's] disability can impact on behavior or on understanding, who understand
5 the impact and consequences of behavior, or who [all are] knowledgeable about the [child
6 student] and the [child's disabilities student's disability]. The IEP team and other qualified
7 personnel shall review the relationship between the student's disability and the behavior
8 subject to the disciplinary action.

9 (1) The IEP team and other qualified personnel may determine the behavior was not a
10 manifestation of the student's disability only if the team and other qualified personnel
11 first consider, in terms of the behavior subject to the disciplinary action, all relevant
12 information, including:

13 (a) Evaluation and diagnostic results, including the results [of of] other relevant
14 information supplied by the parents of the student;

15 (b) Observations of the [child student]; [and]

16 (c) The student's IEP and placement[; and.]

17 (2) The IEP team and other qualified personnel shall then determine that:

18 (a) In relationship to the behavior subject to the disciplinary action, the student's IEP
19 and placement were appropriate, and the special education services, supplementary aids
20 and services, and behavior intervention strategies were provided consistent with the
21 student's IEP and placement;

22 (b) The student's disability did not impair the student's ability to understand the impact
23 and consequences of the behavior subject to disciplinary action; and

24 (c) The student's disability did not impair the student's ability to control the behavior
25 subject to the disciplinary action.

Virginia Special Education Regulations

1 c. If the IEP team and other qualified personnel determine that the standards in subdivision
2 5 b (2) of this subsection were not met, the behavior must be considered a manifestation of
3 the student's disability. If the behavior is a manifestation of the student's disability:

4 (1.) The student can be removed from the student's educational placement only through
5 the IEP process or through placement in an interim alternative educational setting as
6 provided in subdivision [B-2 b, B-4 or B-7-e C 2 b, C 4, or C 7 c] of this section;

7 (2.) The IEP team shall develop or modify strategies, including positive behavioral
8 interventions and supports to address the behavior.

9 d. The review by the IEP team and other qualified personnel to determine manifestation
10 may be conducted at the same IEP meeting to develop or review the student's behavioral
11 intervention plan, as long as the [local educational agency notified the parent or parents of
12 the] purposes of the meeting [are provided to the parent or parents].

13 e. If the IEP team and other qualified personnel determine deficiencies in the student's IEP
14 or placement, the local educational agency shall take immediate steps to remedy those
15 deficiencies through the IEP process.

16 f. If the IEP team and other qualified personnel determine that the behavior of the student
17 with a disability was not a manifestation of the student's disability, the relevant disciplinary
18 procedures applicable to [students a student] without [disabilities a disability] may be
19 applied to the student [with a disability] in the same manner in which the procedures would
20 be applied to [students a student] without [disabilities a disability].

21 (1) If the local educational agency initiates disciplinary procedures, providing due
22 process rights that are applicable to all students, the local educational agency shall ensure
23 that the special education and disciplinary records of the student with a disability are
24 transmitted for consideration by the [person or] persons making the final determination
25 regarding the disciplinary action.

Virginia Special Education Regulations

1 (2) The IEP team determines the extent to which services are necessary to enable the
2 student to appropriately progress in the general curriculum and appropriately advance
3 toward achieving the goals set out in the student's IEP.

4 6. Parent appeal.

5 a. If the student's parent or parents disagree with the determination that the student's
6 behavior was not a manifestation of the student's disability or with any decision regarding
7 placement under these [~~discipline~~ disciplinary] procedures, the parent or parents may
8 request an expedited due process hearing.

9 b. In accordance with the Virginia Department of Education's due process hearing
10 procedures, an expedited hearing shall be scheduled in response to the parent's or parents'
11 request. In reviewing the decision with respect to the manifestation determination, the
12 hearing officer shall determine whether the local educational agency has demonstrated that
13 the student's behavior was not a manifestation of the student's disability consistent with the
14 requirements of subdivision 5 of this subsection. In reviewing the decision to place a
15 student in an interim alternative educational setting, the hearing officer shall apply the
16 standards in subdivision 4 of this subsection.

17 7. Placement during appeals.

18 a. If the parent or parents request a hearing to challenge the interim alternative educational
19 setting or the manifestation determination, the student must remain in the interim
20 alternative educational setting pending the decision of the hearing officer[;] or until the
21 expiration of the time period not to exceed 45 calendar days, unless the parent or parents
22 and local educational agency agree otherwise.

23 b. If the student is placed in an interim alternative educational setting and school personnel
24 propose to change the student's placement after expiration of the interim alternative
25 placement, during the pendency of the due process proceedings, the student shall remain in

Virginia Special Education Regulations

1 the current placement (the student's placement prior to the interim alternative educational
2 setting), except as provided in subdivision 7 c of this subsection.

3 c. If school personnel maintain that it is dangerous for the student to be in the current
4 placement (the student's placement prior to the interim alternative educational setting)
5 during the pendency of the due process proceedings, the local educational agency may
6 request an expedited due process hearing under the procedures contained in subdivision [4
7 b 4 a] of this subsection.

8 d. In determining whether the student may be placed in the alternative educational setting
9 or in another appropriate placement ordered by the hearing officer, the hearing officer shall
10 apply the standards in subdivision [4-e 4 b] of this subsection.

11 e. [~~Placements~~ A placement] ordered by the hearing officer under the [procedures for an]
12 expedited [~~hearings procedures~~ due process hearing] may not be longer than 45 calendar
13 days. If the local educational agency believes that it is dangerous for the student to return to
14 the current placement, the local educational agency may request ~~of~~ the hearing officer to
15 extend the [placement for longer than] 45 calendar days, in accordance with subdivision [4
16 e 4 b] of this subsection.

17 8. Protection for students not yet eligible for special education and related services.

18 a. A student who has not been determined to be eligible for special education and related
19 services and who has engaged in behavior that violates any rule or code of conduct of the
20 local educational agency, including behavior described in subdivisions 2 and 4 of this
21 subsection, may assert any of the protections provided in this chapter if the local
22 educational agency had knowledge that the student was a student with a disability before
23 the behavior that precipitated the disciplinary action occurred.

24 b. A local educational agency shall be deemed to have knowledge that a student is a student
25 with a disability if:

Virginia Special Education Regulations

1 (1) The parent or parents of the student have expressed concern in writing (or orally if the
2 parent or parents do not know how to write or have a disability that prevents a written
3 statement) to school personnel that the student is in need of special education and related
4 services;

5 (2) The behavior or performance of the student demonstrates the need for these services;

6 (3) The parent or parents of the student have requested an evaluation of the student to be
7 determined eligible for special education and related services; or

8 (4) ~~The~~ A teacher of the student or school personnel ~~has~~ have expressed concern about
9 the behavior or performance of the student to the director of special education of the local
10 educational agency or to other personnel in accordance with the local educational
11 agency's child find or special education referral system.

12 c. A local educational agency would not be deemed to have knowledge that a student is a
13 student with a disability if the local educational agency:

14 (1) Conducted an evaluation and determined that the student ~~is~~ was not a student with a
15 disability; or

16 (2) Determined that an evaluation was not necessary, and provided notice to the student's
17 [parent or] parents of its determination in accordance with the notice requirements found
18 in 8 VAC 20-80-70.

19 d. If the local educational agency does not have knowledge that a student is a student with a
20 disability prior to taking disciplinary measures against the student, the student may be
21 subjected to the same disciplinary measures applied to ~~students~~ a student] without
22 [disabilities a disability] who ~~engage~~ engages in comparable behaviors.

23 e. If a request is made for an evaluation of a student during the time period in which the
24 student is subjected to disciplinary measures under subdivisions 2 and 4 of this subsection,
25 the evaluation must be conducted in an expedited manner.

Virginia Special Education Regulations

1 (1) Until the evaluation is completed, the student remains in the educational placement
2 determined by the school personnel, which can include suspension or expulsion without
3 educational services.

4 (2) If the student is determined to be a student with a disability, taking into consideration
5 information from the evaluations conducted by the local educational agency and
6 information provided by the [parent or] parents, the local educational agency shall
7 provide special education and related services [in accordance with the disciplinary
8 procedures contained in these procedures as required for a student with a disability who is
9 disciplined.]

10 9. Expedited due process hearing.

11 a. Under subdivision 4 of this subsection, a local educational agency may request an
12 expedited [due process] hearing if there is substantial evidence that maintaining the current
13 placement for a student with a disability is substantially likely to result in injury to the
14 students or others.

15 b. Under subdivision 6 of this subsection, the parent or parents may request an expedited
16 [due process] hearing if the parent or parents disagree with the manifestation determination
17 or any decision regarding placement under this section.

18 c. The Virginia Department of Education shall establish procedures for expedited due
19 process hearings to include the following requirements:

20 (1) Timelines for conducting the hearing and [issuance issuing] of the decision consistent
21 with the requirements found in 8 VAC 20-80-76; [and]

22 (2) [Delineation Description] of any appeal requirements consistent with the requirements
23 found in 8 VAC 20-80-76.

24 10. Referral to and action by law enforcement and judicial authorities.

Virginia Special Education Regulations

1 a. Nothing in this chapter prohibits a local educational agency from reporting a crime by a
2 student with a disability to appropriate authorities, or ~~[to prevent prevents]~~ state law
3 enforcement and judicial authorities from exercising their responsibilities with regard to the
4 application of federal and state law to crimes committed by a student with a disability [to
5 the extent such action applies to a student without a disability].

6 b. In reporting the crime, the local educational agency shall ensure that copies of the
7 special education and disciplinary records of the student are transmitted for consideration
8 by the appropriate authorities to whom school personnel report the crime. Transmission of
9 such records shall be ~~[consistent in accordance with]~~ with requirements under the
10 Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC
11 20-150-10 et seq.).

12 8 VAC 20-80-70. Procedural safeguards.

13 A. ~~Due process~~ Opportunity to examine records; parent participation ~~[and involvement]~~.

14 1. Procedural safeguards. Each ~~LEA~~ local educational agency shall establish, maintain, and
15 implement procedural safeguards as follows:

16 a. The parent or parents of a child with a disability, ~~upon request,~~ shall be afforded an
17 opportunity to:

18 (1) Inspect and review all education records involving: (1) with respect to (i) the
19 identification, evaluation ~~or,~~ and educational placement of the child; ~~or~~ (2) and (ii) the
20 provision of a free appropriate public education to the child. ~~(see: as set forth in the~~
21 Management of the Student's Scholastic Records Record in the Public Schools of
22 Virginia[; (8 VAC 20-150-10 et seq.)]

23 ~~b. The parent of a child with a disability shall be provided, on request, information as to~~
24 ~~where an independent educational evaluation (IEE) may be obtained.~~

Virginia Special Education Regulations

1 (2) Participate in meetings with respect to the identification, evaluation, and educational
2 placement of the child and the provision of a free appropriate public education to the
3 child.

4 b. Parent participation in meetings.

5 (1) Each local educational agency shall provide notice to ensure that ~~[one or both of]~~ the
6 parent or parents of a child with a disability ~~[are present at each meeting or are afforded~~
7 have] the opportunity to participate [in meetings described in 1 a (2) of this section],
8 including notifying the parent or parents of the meeting early enough to ensure that they
9 will have an opportunity to ~~[attend and scheduling the meeting at a mutually agreed on~~
10 ~~time and place~~ participate]. The notice must: (i) indicate the purpose, date[,], time, and
11 location of the meeting and who will be in attendance[;] and (ii) inform the parent or
12 parents that at their discretion or at the discretion of the local educational agency[,], other
13 individuals who have [knowledge or special] expertise regarding the child, including
14 related services personnel, as appropriate, may participate in meetings with respect to the
15 identification, evaluation, and educational placement of the child and the provision of a
16 free appropriate public education to the child[; and (iii) inform the parent that the
17 determination of the knowledge or special expertise shall be made by the party who
18 invited the individual].

19 (2) A meeting does not include informal or unscheduled conversations involving local
20 educational agency personnel and conversations on issues such as teaching methodology,
21 lesson plans, or coordination of service provision if those issues are not addressed in the
22 child's IEP. A meeting also does not include preparatory activities that local educational
23 agency personnel engage in to develop a proposal or a response to a parent proposal that
24 will be discussed at a later meeting.

25 [c. Parent involvement in placement decisions.

Virginia Special Education Regulations

1 ~~(1) Each local educational agency shall ensure that the parent or parents of each child~~
2 ~~with a disability are members of any group that makes decisions on the educational~~
3 ~~placement of their child.~~

4 ~~(2) In implementing the requirements, the local educational agency shall provide notice~~
5 ~~to ensure that one or both of the parents of a child with a disability are present at each~~
6 ~~meeting or are afforded the opportunity to participate, including notifying the parent or~~
7 ~~parents of the meeting early enough to ensure that they will have an opportunity to attend~~
8 ~~and scheduling the meeting at a mutually agreed on time and place. The notice must~~
9 ~~indicate: (i) the purpose, time, and location of the meeting and who will be in attendance;~~
10 ~~(ii) inform the parent or parents that at their discretion or at the discretion of the local~~
11 ~~educational agency other individuals who have expertise regarding the child, including~~
12 ~~related services personnel, as appropriate, may participate in meetings with respect to the~~
13 ~~identification, evaluation, and educational placement of the child and the provision of a~~
14 ~~free appropriate public education to the child.~~

15 ~~(3) If neither parent can participate in a meeting in which a decision is to be made~~
16 ~~relating to the educational placement of their child, the local educational agency shall use~~
17 ~~other methods to ensure their participation, including individual or conference telephone~~
18 ~~calls, or video conferencing.~~

19 ~~(4) A placement decision may be made by a group without the involvement of the parent~~
20 ~~or parents if the local educational agency is unable to obtain the parents' participation in~~
21 ~~the decision. In this case, the local educational agency must have a record of its attempts~~
22 ~~to ensure their involvement, including: (i) information about its attempts to arrange a~~
23 ~~mutually agreed on time and place, such as detailed records of telephone calls made or~~
24 ~~attempted and the results of those calls; (ii) copies of correspondence sent to the parents~~
25 ~~and any responses received; and (iii) detailed records of visits made to the parent's or~~
26 ~~parents' home or place of employment and the results of those visits.~~

Virginia Special Education Regulations

1 ~~(5) The local educational agency shall make reasonable efforts to ensure that the parent or~~
2 ~~parents understand, and are able to participate in, any group discussions relating to the~~
3 ~~educational placement of their child, including arranging for an interpreter for parents~~
4 ~~with deafness or whose native language is other than English.~~

5 c. Parent involvement in placement decisions. Each local educational agency shall ensure
6 that the parent or parents of each child with a disabilities are members of:

7 (1) The IEP team that makes decisions on the educational placement of their child; and

8 (2) Any Comprehensive Services Act team that makes decisions on the educational
9 placement of their child.]

10 B. Independent educational evaluation.

11 1. General.

12 ~~e.~~ a. The parent or parents of a child with a disability shall have the right to obtain an IEE
13 independent educational evaluation of the child;

14 b. The local educational agency shall provide to the parent or parents of a child with a
15 disability, upon request, information about where an independent educational evaluation
16 may be obtained and the applicable criteria for independent educational evaluations.

17 2. Parental right to evaluation at public expense.

18 ~~(1) Such IEE will be~~ a. The parent or parents of a child with a disability have the right to an
19 independent educational evaluation at public expense if the parent disagrees or parents
20 disagree with [the an] evaluation obtained by the LEA; however, the LEA shall have the
21 right to initiate a due process hearing to show that its evaluation is appropriate. If the final
22 decision is that the evaluation is appropriate then, the parent still has the right to an IEE,
23 but not at public expense local educational agency.

Virginia Special Education Regulations

1 b. If the parent or parents request an independent educational evaluation at public expense,
2 the local educational agency must, without unnecessary delay, either:

3 (1) Initiate a due process hearing to show that its evaluation is appropriate; or

4 (2) Ensure that an independent educational evaluation is provided at public expense,
5 unless the local educational agency demonstrates in a hearing that the evaluation obtained
6 by the parent or parents does not meet local educational agency criteria.

7 c. If the local educational agency initiates a hearing and the final decision is that the local
8 educational agency's evaluation [provided by the local educational agency] is appropriate,
9 the parent or parents still have the right to an independent educational evaluation, but not at
10 public expense.

11 d. If the parent or parents request an independent educational evaluation, the local
12 educational agency may ask [the reasons] for the parent's or parents' [reasons why they
13 object objection] to the public evaluation. However, the explanation by the parent or
14 parents may not be required and the local educational agency may not unreasonably delay
15 either providing the independent educational evaluation at public expense or initiating a
16 due process hearing to defend the public evaluation.

17 ~~(2) Whenever~~ e. [Agency criteria.] If an IEE independent educational evaluation is at
18 public expense, the criteria under which the evaluation is obtained, including the location
19 of the evaluation and the qualifications of the examiner, must be the same as the criteria
20 which the LEA local educational agency uses when it initiates an evaluation, to the extent
21 those criteria are consistent with the parent's or parents' right to an independent
22 educational evaluation. Except for the criteria, a local educational agency may not impose
23 conditions or timelines related to obtaining an independent educational evaluation.

24 ~~(3)~~ 3. Parent-initiated evaluations. The results of [the an] IEE independent educational
25 evaluation whether or not at public expense:

Virginia Special Education Regulations

1 (a) a. Must be considered by the LEA local educational agency, if it meets local
2 educational agency criteria, in any decision regarding a free appropriate public education
3 for the child; and

4 (b) b. May be presented as evidence at a hearing under 8 VAC 20-80-70 A 2 of this chapter
5 8 VAC 20-80-76.

6 C. Prior notice by the local educational agency; content of notice.

7 d. The parent of a child with a disability shall be given 1. Written notice within must be given
8 to the parent or parents of a child with a disability within a reasonable time before the LEA
9 local educational agency:

10 a. Proposes or refuses to initiate or change the identification, evaluation, or educational
11 placement (including graduation with a standard or advanced studies diploma) of the child,
12 or the provision of free appropriate public education for the child; or

13 b. Refuses to initiate or change the identification, evaluation, or educational placement of
14 the child, or the provision of [a] free appropriate public education for the child.

15 [2.] If the notice relates to an action proposed by the local educational agency that also
16 requires parental consent, the local educational agency may give notice at the time it requests
17 parental consent.

18 e. [2, 3.] The notice shall include:

19 (1) A full explanation of all procedural safeguards available to the parents;

20 (2) a. A description of the action proposed or refused by the LEA, local educational
21 agency;

22 b. An explanation of [why] the LEA local educational [agency proposes or refuses
23 agency's proposal or refusal] to take the action, and;

Virginia Special Education Regulations

- 1 c. A description of any other options the LEA local educational agency considered and the
2 reasons ~~[why for the rejection of]~~ those options ~~[were rejected]~~;
- 3 ~~(3) d.~~ d. A description of ~~the nature, purpose, and use of any~~ each evaluation procedure, test,
4 record, or report the LEA local educational agency used as a basis for the ~~proposal~~
5 proposed or refusal refused action; and
- 6 ~~(4) e.~~ e. A description of any other factors ~~[which that]~~ are relevant to the LEA's local
7 educational agency's proposal or refusal;
- 8 f. A statement that the parent or parents of a child with a disability have protection under
9 the procedural safeguards [of this chapter] and, if [this the] notice is not an initial referral
10 for evaluation, the means by which a copy of a description of the procedural safeguards can
11 be obtained; and
- 12 g. Sources for the parent or parents to contact [in order] to obtain assistance in
13 understanding the provisions of this section.
- 14 ~~f. Information contained in [3, 4.] The notice shall be:—(1) (i) written in language~~
15 ~~understandable by to the general public;—(2) and (ii) provided in the native language of the~~
16 ~~parent or parents or other mode of communication used by the parent or parents, unless it is~~
17 ~~clearly not feasible to do so; and .~~
- 18 ~~(3) If the native language or other mode of communication of the parent or parents is not a~~
19 ~~written language, then the LEA local educational agency shall take steps to ensure that:~~
- 20 ~~(a) That~~ a. The notice is translated orally or by other means to the parent or parents in his
21 their native language or other mode of communication;
- 22 ~~(b) That~~ b. The parent ~~understands~~ or parents understand the content of the notice; and
- 23 ~~(c) That~~ c. There is ~~documentation~~ written evidence that the requirements ~~in~~ of
24 subdivisions ~~(a) a~~ and ~~(b) b~~ of ~~subdivision A-1 f (3) of this section~~ subdivision have been
25 met.

Virginia Special Education Regulations

1 D. Procedural safeguards notice.

2 1. A copy of the procedural safeguards available to the parent or parents of a child with a
3 disability must be given to the parent or parents at a minimum [upon]:

4 a. [~~Upon initial~~ Initial] referral for evaluation;

5 b. [~~Upon each~~ Each] notification of an IEP meeting;

6 c. [~~Upon reevaluation~~ Reevaluation] of the child; [~~and~~]

7 d. [~~Upon receipt~~ Receipt] of a request for a due process hearing[-; and]

8 [e. Notification of a decision to take disciplinary action, in accordance with 8 VAC 20-80-
9 68 B5.]

10 2. The procedural safeguards notice must include a full explanation of all of the procedural
11 safeguards relating to:

12 a. Independent educational evaluation;

13 b. Prior written notice;

14 c. Parental consent;

15 d. Access to educational records;

16 e. Opportunity to present complaints and to initiate due process hearings;

17 f. The child's placement during pendency of due process proceedings;

18 g. Procedures for students who are subject to placement in an interim alternative
19 educational setting;

20 h. Requirements for unilateral placement by parent or parents of children in private schools
21 at public expense;

22 i. Mediation;

Virginia Special Education Regulations

- 1 j. Due process hearings, including requirements for disclosure of evaluation results and
- 2 recommendations;
- 3 k. Civil actions;
- 4 l. Attorneys' fees; and
- 5 m. The state complaint procedures, including a description of how to file a complaint and
- 6 the timelines under those procedures.
- 7 3. The notice required under this [section subsection] must meet the prior notice requirements
- 8 regarding understandable language ~~of in~~ subsection C of this section.

9 E. Parental consent.

10 ~~g. Written~~ 1. General. Informed parental consent shall be obtained before:

- 11 ~~(1) Preplacement~~ a. Conducting an initial evaluation or reevaluation[.] including a
- 12 functional behavioral assessment [if such assessment is not a review of existing data
- 13 conducted at an IEP meeting];
- 14 b. Any change in identification [or eligibility] of a child with [disabilities a disability];
- 15 ~~(2) c. Initial placement of provision of special education and related services to a child~~
- 16 ~~with a disability in a program providing special education and related services; and any~~
- 17 ~~revision to the child's IEP services;~~
- 18 ~~(3) Any change in program/placement, including~~ d. Any partial or complete termination of
- 19 special education and related services, except for expulsions and graduation. Consent for
- 20 ~~placement may be revoked up until the first day of the placement. with a standard or~~
- 21 advanced studies diploma; and

22 ~~h. Written parental consent shall be obtained for the following:~~

- 23 ~~(1) Any change in identification of a child with disabilities; and~~

Virginia Special Education Regulations

1 ~~(2) Any evaluation which is conducted other than the triennial evaluations. (Parental~~
2 ~~consent is not necessary for reviewing the child's records for conducting a reevaluation.)~~

3 e. Accessing a parent's or parents' private insurance proceeds [in accordance with this
4 chapter].

5 2. Consent for initial evaluation may not be construed as consent for initial placement.

6 ~~3. Consent for initial placement may be revoked by the parent at any time prior to the first~~
7 ~~day of that placement. If a parent revokes consent, that revocation is not retroactive (i.e., it~~
8 ~~does not negate an action that has occurred after the consent was given and before the~~
9 ~~consent was revoked).~~

10 ~~i. Except for preplacement evaluation and initial placement, consent or refusal to give~~
11 ~~consent for those other situations requiring consent shall be given by the parent to the LEA~~
12 ~~within 10 administrative working days after notice is received. If the parent fails to notify~~
13 ~~the LEA within 10 administrative working days, the LEA may proceed as if consent had~~
14 ~~been granted, and the parent must initiate due process to contest the action. If the parent~~
15 ~~refuses to give consent, the LEA shall attempt to resolve parental withholding of consent~~
16 ~~through informal means. If those informal methods are not successful, the LEA must use~~
17 ~~other measures as necessary to ensure that, except for preplacement evaluation and initial~~
18 ~~placement, parental refusal to consent will not result in a denial of a necessary free~~
19 ~~appropriate public education.~~

20 ~~2. Impartial due process hearing. Each LEA or the parent of a child determined or believed to~~
21 ~~have a disability, shall have the right to initiate a hearing when a disagreement occurs on~~
22 ~~matters relating to identification, evaluation (including determination of whether or not an~~
23 ~~IEE at public expense is appropriate), or educational placement of the child or the provision~~
24 ~~of a free appropriate public education for the child. The LEA may initiate due process to~~
25 ~~appeal parental withholding of consent where this chapter requires the LEA to obtain~~
26 ~~consent.~~

Virginia Special Education Regulations

1 ~~3. Child's status during proceedings. The child's status during proceedings shall be as~~
2 ~~follows:~~

3 ~~a. During the pendency of any administrative hearing or appeal or during the pendency of~~
4 ~~any judicial proceeding regarding this chapter, unless the LEA and the parent of the child~~
5 ~~agree otherwise, the child must remain in his current educational placement. While the~~
6 ~~placement may not be changed, this does not preclude using normal procedures for dealing~~
7 ~~with children who are endangering themselves or others. Such procedures do not include~~
8 ~~expulsion or suspension over 10 days; however, the procedures may include time out,~~
9 ~~detention, restriction of privileges, or temporary suspension up to 10 days.~~

10 ~~b. If the issue involves an application for initial admission to public school, the child of~~
11 ~~school age, with consent of the parent, must be placed in a public school program until the~~
12 ~~completion of all proceedings.~~

13 ~~4. Mediation. This chapter does not preclude the use of mediation in the resolution of~~
14 ~~differences, but mediation shall not be used to deny or delay a parent's rights. Such~~
15 ~~mediation may be conducted only by personnel who were not previously involved in the~~
16 ~~particular case. However, such mediation shall not extend the resolution of a hearing beyond~~
17 ~~the 45 calendar days unless otherwise approved and documented as in the best interests of the~~
18 ~~child by the hearing officer upon request of the parties. The hearing officer shall notify the~~
19 ~~parties and the SEA in writing of the specific number of days to be allowed for mediation.~~

20 ~~5. Commencement of the due process hearing.~~

21 ~~a. Request for a hearing shall be made in writing to the LEA or other public agency board~~
22 ~~as appropriate.~~

23 ~~b. The LEA shall inform the parent of any free or low cost legal or other relevant services~~
24 ~~available in the area as well as the attorney fees provision of 8 VAC 20-80-70 A 12 when:~~

25 ~~(1) The parent requests the information; or~~

Virginia Special Education Regulations

1 ~~(2) The parent or the LEA initiates a hearing.~~

2 ~~e. The LEA shall ensure that the Virginia Supreme Court appoints a hearing officer within~~
3 ~~five administrative working days following the request for a hearing to facilitate~~
4 ~~compliance with the 45 calendar days timeline.~~

5 ~~6. Qualifications, removal, substitution and challenge of hearing officers.~~

6 ~~“Impartial hearing officer” means a person selected from a list maintained by the Office of~~
7 ~~the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted:~~

8 ~~a. By a person employed by an agency involved with the care or education of the child; or~~

9 ~~b. By a person having a personal or professional interest which would conflict with his~~
10 ~~objectivity in the hearing.~~

11 ~~Appointment, qualifications, retention, training, selection, removal and disqualification of~~
12 ~~hearing officers are governed by the Hearing Office System Rules of Administration~~
13 ~~Promulgated by the Supreme Court of Virginia.~~

14 ~~7. Responsibilities of LEA; prehearing.~~

15 ~~a. The confirmation of the appointment of the hearing officer by the LEA shall be done in~~
16 ~~such a manner as to protect the confidentiality of the parents and the child. All necessary~~
17 ~~information shall be forwarded promptly to the hearing officer, together with the official~~
18 ~~request for a hearing in order to ensure that timelines are maintained.~~

19 ~~b. The LEA shall send a copy of the correspondence confirming the appointment of a~~
20 ~~hearing officer along with a copy of the request for a hearing to the SEA within five~~
21 ~~administrative working days of the appointment of a hearing officer.~~

22 ~~c. The LEA shall arrange for recording equipment to be set up, or a stenographer to be~~
23 ~~present, in the hearing room. The LEA shall also ensure that the recording equipment, if~~
24 ~~used, is reliable and working and that the recording is clear and can be transcribed, if~~

Virginia Special Education Regulations

1 ~~necessary. A complete, accurate, written verbatim transcript of the proceedings need not be~~
2 ~~made at the conclusion of the hearing, unless the hearing officer needs it for review prior to~~
3 ~~rendering a decision. When there is an appeal of the decision, a verbatim copy of the~~
4 ~~recording or transcript shall be supplied to the parties to the appeal, upon request, and free~~
5 ~~of charge.~~

6 ~~d. Each LEA shall keep a list of the persons who serve as hearing officers. The list must~~
7 ~~include a statement of the qualifications of each of those persons.~~

8 ~~8. Responsibilities of the hearing officer; prehearing.~~

9 ~~a. The hearing officer shall, within five administrative working days of appointment, secure~~
10 ~~a time, date and location for the hearing which is convenient to both parties, and notify~~
11 ~~both parties to the hearing, and the SEA, in writing, of the time, date and location of the~~
12 ~~hearing.~~

13 ~~b. The hearing officer shall ascertain whether or not the parties will have attorneys at the~~
14 ~~hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of~~
15 ~~the parties.~~

16 ~~c. The hearing officer shall ascertain from the parents whether the hearing will be open.~~

17 ~~d. The hearing officer shall ensure that a stenographer or recording equipment is present at~~
18 ~~the hearing and ensure that testimony is clearly recorded, either by the stenographer or~~
19 ~~recording equipment, to permit an accurate record of the proceedings. If a tape recorder is~~
20 ~~used, the hearing officer shall be provided a written list of speakers in order of appearance,~~
21 ~~and at the beginning of the hearing identify on tape each speaker's title, position, and~~
22 ~~interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall~~
23 ~~state his name for the record.~~

24 ~~e. The hearing officer shall receive a list of witnesses and documentary evidence for the~~
25 ~~hearing no later than five administrative working days prior to the hearing.~~

Virginia Special Education Regulations

1 ~~f. The hearing officer may schedule a prehearing conference to be attended by the parties~~
2 ~~and attorneys, if appropriate. Such a conference may be requested by the hearing officer or~~
3 ~~the parties to the hearing to simplify or eliminate issues.~~

4 ~~g. The hearing officer has power to issue subpoenas requiring testimony or the productions~~
5 ~~of books, papers, and physical or other evidence.~~

6 ~~(1) The hearing officer may procure an order of enforcement for a subpoena in the circuit~~
7 ~~court of the jurisdiction in which the hearing is to be held.~~

8 ~~(2) Any person so subpoenaed may petition the circuit court for a decision regarding the~~
9 ~~validity of such subpoena if the hearing officer does not question or modify the subpoena~~
10 ~~after objection to that.~~

11 ~~h. The hearing officer shall ensure that the LEA has appointed a surrogate parent who is~~
12 ~~acting to protect the educational interests and rights of the child in accordance with 8VAC~~
13 ~~20-80-80 of this chapter.~~

14 ~~9. Rights of parties to the hearing.~~

15 ~~a. Any party to a hearing shall have the right to:~~

16 ~~(1) Be accompanied and advised by counsel or by individuals with special knowledge or~~
17 ~~training concerning the problems of children with disabilities, without being in violation~~
18 ~~of the provisions of § 54.1-3904 of the Code of Virginia.~~

19 ~~(2) Present evidence and confront, cross examine, and request the hearing officer to~~
20 ~~compel the attendance of witnesses.~~

21 ~~(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to~~
22 ~~the other party at least five administrative working days before the hearing.~~

23 ~~(4) Receive written findings of fact and decisions rendered by the hearing officer.~~

24 ~~b. The parents involved in a hearing must be given the right to:~~

Virginia Special Education Regulations

- 1 ~~(1) Have the child who is the subject of the hearing present;~~
- 2 ~~(2) Open the hearing to the public;~~
- 3 ~~(3) Receive a copy of the implementation plan; and~~
- 4 ~~(4) Obtain the written or electronic verbatim record of the hearing upon request and free~~
- 5 ~~of charge.~~

6 10. Due process hearing procedure.

7 ~~a. The rights of all parties to the hearing shall be protected by the hearing officer.~~

8 ~~b. The hearing officer shall ensure that an atmosphere conducive to impartiality and~~

9 ~~fairness is maintained at all times in the hearing. The hearing officer may excuse witnesses~~

10 ~~after they testify to limit the number of expert witnesses present at the same time or to~~

11 ~~sequester witnesses during the hearing.~~

12 ~~c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.~~

13 ~~d. The hearing officer shall remand the matter in dispute to a conference between the~~

14 ~~parties only when informal resolution and discussion appear to be desirable and~~

15 ~~constructive. This action shall not be used to delay or deprive the parties of their rights and~~

16 ~~shall be exercised only when the best interest of the child will be served.~~

17 ~~e. The hearing officer may require an independent educational evaluation of the child. This~~

18 ~~evaluation shall be at public expense and shall be conducted in accordance with the~~

19 ~~regulations governing evaluation and assessment.~~

20 ~~f. The hearing officer, in the course of the proceedings, shall include in the written findings~~

21 ~~a determination of the following:~~

22 ~~(1) Whether or not the requirements of notice to parents were satisfied;~~

23 ~~(2) Whether or not the child has a disability;~~

24 ~~(3) Whether or not the child needs special education and related services; and~~

Virginia Special Education Regulations

1 ~~(4) Whether or not the LEA is supplying a free appropriate public education.~~

2 ~~g. The hearing officer shall make no presumptions in the case and shall base his findings of~~
3 ~~fact and decisions solely upon the preponderance of the evidence presented at the hearing~~
4 ~~and applicable state and federal law.~~

5 ~~h. The hearing officer shall report findings of fact and decisions to both parties to the~~
6 ~~appeal, the LEA, and to the SEA.~~

7 ~~i. A decision made by the hearing officer is final, unless a party to the hearing appeals to~~
8 ~~the state for an administrative review. An appeal by either party must be instituted within~~
9 ~~30 administrative working days of the date of the hearing decision.~~

10 ~~11. Administrative appeal and impartial review.~~

11 ~~a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an~~
12 ~~impartial review of the hearing. The review shall be conducted by a reviewing officer~~
13 ~~appointed according to the Hearing Officer System Rules of Administration Promulgated~~
14 ~~by the Supreme Court of Virginia. The SEA shall ensure the appointment within two~~
15 ~~administrative days of the receipt of a request for a review of a due process hearing. The~~
16 ~~official conducting the review shall:~~

17 ~~(1) Examine the entire hearing record;~~

18 ~~(2) Ensure that the procedures at the hearing were consistent with the requirements of due~~
19 ~~process;~~

20 ~~(3) Seek additional evidence, if necessary. If a hearing is held to receive additional~~
21 ~~evidence, then all hearing rights as specified in this section apply;~~

22 ~~(4) Afford the parties an opportunity for oral or written argument, or both, at the~~
23 ~~discretion of the reviewing official;~~

Virginia Special Education Regulations

1 ~~(5) Advise all parties of their right to continue to be represented by counsel whether or~~
2 ~~not the reviewing official determines that a further hearing is necessary;~~

3 ~~(6) Make an independent decision upon completion of the review; and~~

4 ~~(7) Give a copy of written findings and the decisions to the parties to the appeal, the LEA~~
5 ~~and to the SEA in the manner prescribed.~~

6 ~~b. The decision made by the reviewing official is final and binding on all parties, unless~~
7 ~~any party aggrieved by the findings and decisions of the administrative review brings civil~~
8 ~~action in any state court of competent jurisdiction within one year or in federal district~~
9 ~~court. In any such action, the court shall receive the records of the administrative~~
10 ~~proceedings, shall hear additional evidence in its discretion at the request of either party,~~
11 ~~and basing its decision on the preponderance of the evidence, shall grant such relief as it~~
12 ~~determines to be appropriate.~~

13 ~~12. Attorney's fees.~~

14 ~~a. In any such action or proceeding, the court, in its discretion, may award reasonable~~
15 ~~attorney's fees as part of the costs to the parents or guardian of a child with a disability who~~
16 ~~is the prevailing party.~~

17 ~~b. If a written offer of settlement is made to a parent or guardian within the time prescribed~~
18 ~~by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative~~
19 ~~proceeding, at any time more than 10 days before the proceeding begins, and the offer is~~
20 ~~not accepted within 10 days and the court or administrative officer finds that the relief~~
21 ~~finally obtained by the parents or guardian is not more favorable to the parent or guardian~~
22 ~~than the offer of settlement, no award of attorney's fees and related costs may be made for~~
23 ~~services performed subsequent to the time of such offer, unless the court finds that the~~
24 ~~prevailing party was reasonably justified in rejecting the settlement offer.~~

25 ~~13. Timelines for hearings and reviews.~~

Virginia Special Education Regulations

1 ~~a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request~~
2 ~~for a due process hearing:~~

3 ~~(1) A final decision is rendered in the hearing, unless otherwise documented by the~~
4 ~~hearing officer; and~~

5 ~~(2) A copy of the decision is mailed to the parties and the SEA.~~

6 ~~b. The SEA shall ensure that not later than 30 calendar days after the receipt of a request~~
7 ~~for a review:~~

8 ~~(1) A final decision is rendered in the review, unless otherwise documented by the~~
9 ~~reviewing officer; and~~

10 ~~(2) A copy of the decision is mailed to the parties.~~

11 ~~c. A hearing or reviewing officer may grant specific extensions of time beyond the periods~~
12 ~~set out in subdivisions a and b of subdivision A 13 of this section at the request of either~~
13 ~~party. This action shall in no way be used to delay or deprive the parties of their rights and~~
14 ~~should be exercised only when the best interests of the child will be served. Changes in~~
15 ~~hearing dates or extensions are to be noted in writing which shall be sent to all parties and~~
16 ~~to the SEA.~~

17 ~~d. Each hearing and each review involving oral arguments must be conducted at a time and~~
18 ~~place which is reasonably convenient to the parent and child involved.~~

19 ~~14. Costs of due process hearings and state review.~~

20 ~~a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs~~
21 ~~shared by the SEA shall include expenses of the hearing officer (i.e., time, travel,~~
22 ~~secretarial, postal and telephone expenses), expenses incurred by order of the hearing or~~
23 ~~reviewing officer (i.e., independent educational evaluations, deposition or transcript), and~~
24 ~~expenses for making a record of a hearing (i.e., hearing tapes or stenographer). The SEA~~

Virginia Special Education Regulations

1 ~~shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or~~
2 ~~reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.~~

3 ~~b. The SEA shall be responsible for all approved costs for state reviews.~~

4 ~~15. Implementation plan.~~

5 ~~a. The LEA shall develop an implementation plan within 45 calendar days of the rendering~~
6 ~~of a decision or the withdrawal of a hearing or review request. Such plan shall be based~~
7 ~~upon the decision of the hearing officer, the reviewing officer, or agreement between the~~
8 ~~parties. The implementation plan must state how and when the decision or agreement will~~
9 ~~be put into operation. If the decision or agreement affects the child's educational program,~~
10 ~~the revised IEP shall be made a part of the implementation plan. The implementation plan~~
11 ~~shall include the name and position of a case manager in the LEA charged with~~
12 ~~implementing the decision. Copies of this plan shall be forwarded to the parties to the~~
13 ~~hearing, the hearing or reviewing officer, and the SEA.~~

14 ~~b. Failure of either of the parties to comply with the implementation plan shall be reported~~
15 ~~to the SEA for investigation or appropriate action.~~

16 ~~16. Due process file. The LEA shall maintain a file containing the following:~~

17 ~~a. A copy of the hearing and reviewing officer's findings of fact and decisions;~~

18 ~~b. A copy of the implementation plan;~~

19 ~~c. A copy of the electronic or verbatim transcript of the hearing proceedings; and~~

20 ~~d. A copy of all documents and exhibits presented at the due process hearing and state level~~
21 ~~review.~~

22 ~~B. Confidentiality of information. The confidentiality of information shall be as set forth in the~~
23 ~~Management of the Student's Scholastic Record.~~

Virginia Special Education Regulations

1 ~~C. Complaint procedure. Complaints regarding violations of rights of parents or children with~~
2 ~~disabilities or both shall be addressed to the Superintendent of Public Instruction or designee,~~
3 ~~with the additional requirements as follows:~~

4 1. ~~The complaint must be in writing, signed by the organization or individual filing the~~
5 ~~complaint, and contain a statement that an LEA has violated the Individuals with Disabilities~~
6 ~~Education Act (IDEA) (20 USC § 1400 et seq.) or this chapter.~~

7 2. ~~The complaint must contain a statement of facts on which the complaint is based. In~~
8 ~~addition, all relevant documents shall be forwarded to the Superintendent of Public~~
9 ~~Instruction or designee.~~

10 4. Parental consent is not required before:

11 a. [Reviewing Review of] existing data as part of an evaluation or a reevaluation including
12 a functional behavioral assessment;

13 b. [Administering Administration of] a test or other evaluation that is administered to all
14 children unless, before administration of that test or evaluation, consent is required of the
15 parent or parents of all children; or

16 c. [Administering Administration of] a test or [other] evaluation that is used to measure
17 progress on the ~~children's~~ child's goals and [benchmarks or] objectives and is included in
18 the IEP; ; or

19 d. [Teacher and A teacher's] or related service [providers' provider's] observations or
20 ongoing classroom evaluations.

21 5. If the parent or parents of a child with a disability refuse consent for initial evaluation or a
22 reevaluation, the local educational agency may [continue to pursue those evaluations by
23 using the due process use mediation or due process hearing] procedures [or the mediation
24 procedures if appropriate to pursue the evaluation].

25 6. Failure to respond to request for reevaluation.

Virginia Special Education Regulations

1 a. Informed parental consent need not be obtained for reevaluation if the local educational
2 agency can demonstrate that it has taken reasonable measures to obtain that consent, and
3 the child's parent or parents have failed to respond.

4 b. To meet the reasonable measures requirement ~~[in this subdivision 6 a,]~~ the local
5 educational agency must ~~[use parent participation procedures consistent with those in~~
6 ~~8 VAC 20-80-62 D 4.~~ have a record of its attempts to secure the consent, such as:

7 (1) Detailed records of telephone calls made or attempted and the results of those calls;

8 (2) Copies of correspondence sent to the parent or parents and any responses received;
9 and

10 (3) Detailed records of visits made to the parent's or parents' home or place of
11 employment and the results of those visits.]

12 7. A local educational agency may not use a parent's or parents' refusal to consent to one
13 service or activity to deny the parent, parents [,] or child any other service, benefit, or activity
14 of the local educational agency, except as provided by this chapter.

15 F. Parental rights regarding use of public or private insurance.

16 1. Each local educational agency using [Medicaid or other] public insurance to pay for
17 services required under this chapter [, as permitted under the public insurance program] shall:

18 a. Provide notice to the parent or parents that:

19 (1) The parent or parents are not required to sign up for public insurance in order for their
20 child to receive a free appropriate public education; ~~[and]~~

21 (2) The parent or parents are not required to incur out-of-pocket expenses, such as
22 payment of a deductible or copay amount; ~~incurred in filing a claim for services; and~~

23 (3) The local educational agency may not use a child's benefits under a public insurance
24 program if that use would (i) decrease available lifetime coverage or any other insured

Virginia Special Education Regulations

1 benefit; (ii) result in the family paying for services that would otherwise be covered by
2 the public insurance program and that are required for the child outside of the time the
3 child is in school; (iii) increase premiums or lead to [the] discontinuation of insurance;
4 [~~(iv)~~] or [(iv)] risk loss of eligibility for home and community-based waivers, based on
5 aggregate health-related expenditures.

6 b. Obtain [~~informed~~] parental consent to release educational records to the public insurance
7 [~~company program~~] for billing purposes in accordance with the provisions of the
8 Management of Student's Scholastic [~~Records Record~~] in the Public Schools of Virginia
9 (8 VAC 20-150-10 et seq.).

10 2. Each local educational agency using private insurance to pay for services required under
11 this chapter shall:

12 a. Obtain [~~informed~~] parental consent [each time the local education agency proposes] to
13 access the parent's [~~or parents'~~] private insurance proceeds.

14 b. Obtain parental consent and inform the parent [~~or parents~~] that their refusal to permit the
15 [~~public local educational~~] agency to access their private insurance does not relieve the local
16 educational agency of its responsibility to ensure that all required services are provided at
17 no cost to the parent or parents each time it proposes to access the parent's or parents'
18 private insurance.

19 c. Obtain parental consent to release educational information to the private insurance
20 company for billing purposes in accordance with the provisions of the Management of
21 Student's Scholastic [~~Records Record~~] in the Public Schools of Virginia (8 VAC 20-150-10
22 et seq.).

23 G. [~~The confidentiality of information shall be as set forth in the Management of Student's~~
24 Scholastic Record in the Public Schools of Virginia (8 VAC 20 150 10 et seq.); Confidentiality
25 of information.

Virginia Special Education Regulations

1 1. Access rights.

2 a. The local educational agency shall permit a parent or parents to inspect and review any
3 education records relating to their children that are collected, maintained, or used by the
4 local educational agency under this chapter. The local educational agency shall comply
5 with a request without unnecessary delay and before any meeting regarding an IEP or any
6 hearing in accordance with section 76 of this chapter and section 68 of this chapter, and in
7 no case more than 45 days after the request has been made.

8 b. The right to inspect and review education records under this section includes:

9 (1) The right to a response from the local educational agency to reasonable requests for
10 explanations and interpretations of the records;

11 (2) The right to request that the local educational agency provide copies of the records
12 containing the information if failure to provide those copies would effectively prevent the
13 parent from exercising the right to inspect and review the records; and

14 (3) The right to have a representative of the parent inspect and review the records.

15 c. A local educational agency may presume that a parent has authority to inspect and
16 review records relating to his children unless the local educational agency has been advised
17 that the parent does not have the authority under applicable Virginia law governing such
18 matters as guardianship, separation, and divorce.

19 2. Record of access. Each local educational agency shall keep a record of parties, except
20 parents and authorized employees of the local educational agency, obtaining access to
21 education records collected, maintained, or used under Part B of the Individuals with
22 Disabilities Education Act (20 USC §§ 1400 et seq.), including the name of the party, the
23 date of access, and the purpose of the access.

Virginia Special Education Regulations

1 3. Record on more than one child. If any education record includes information on more than
2 one child, the parent or parents of those children have the right to inspect and review only the
3 information relating to their child or to be informed of the specific information requested.

4 4. List of types and locations of information. Each local educational agency shall provide on
5 request to a parent or parents a list of the types and locations of education records collected,
6 maintained, or used by the local educational agency.

7 5. Fees.

8 a. Each local educational agency may charge a fee for copies of records that are made for a
9 parent or parents under this chapter if the fee does not effectively prevent the parent or
10 parents from exercising their right to inspect and review those records.

11 b. A local educational agency may not charge a fee to search for or to retrieve information
12 under this section.

13 6. Amendment of records at parent's request.

14 a. A parent or parents who believe that information in the education records collected,
15 maintained, or used under this chapter is inaccurate or misleading or violates the privacy or
16 other rights of the child may request the local educational agency that maintains the
17 information to amend the information.

18 b. The local educational agency shall decide whether to amend the information in
19 accordance with the request within a reasonable period of time of receipt of the request.

20 c. If the local educational agency decides to refuse to amend the information in accordance
21 with the request, it shall inform the parent or parents of the refusal and advise the parent or
22 parents of the right to a hearing under subsection 7 of this section.

23 7. Opportunity for a hearing. The local educational agency shall provide on request an
24 opportunity for a hearing to challenge information in education records to ensure that it is not
25 inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Virginia Special Education Regulations

1 8. Results of hearing.

2 a. If, as a result of the hearing, the local educational agency decides that the information is
3 inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child,
4 it shall amend the information accordingly and so inform the parent in writing.

5 b. If, as a result of the hearing, the local educational agency decides that the information is
6 not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the
7 child, it shall inform the parent of the right to place in the child's education records a
8 statement commenting on the information or setting forth any reasons for disagreeing with
9 the decision of the agency.

10 c. Any explanation placed in the records of the child under this section must:

11 (1) Be maintained by the local educational agency as part of the records of the child as
12 long as the record or contested portion is maintained by the local educational agency; and

13 (2) If the records of the child or the contested portion is disclosed by the agency to any
14 party, the explanation must also be disclosed to the party.

15 9. Hearing procedures. A hearing held under subsection 7 of this section must be conducted
16 in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and
17 Privacy Act (20 USC § 1232g).

18 10. Consent.

19 a. Except as to disclosure to law enforcement and judicial authorities in accordance with
20 section 68 of this chapter, for which parental consent is not required under the Family
21 Educational Rights and Privacy Act (20 USC § 1232g), parental consent must be obtained
22 before personally identifiable information is:

23 (1) Disclosed to anyone other than officials of the local educational agencies collecting,
24 maintaining, or using the information under this chapter, subject to subsection 10 b of this
25 section; or

Virginia Special Education Regulations

1 (2) Used for any purpose other than meeting a requirement of this chapter.

2 b. A local educational agency subject to the Family Education Rights and Privacy Act (20
3 USC § 1232g) may not release information from education records to any agency or
4 institution that collects, maintains, or uses personally identifiable information, or from
5 which information is obtained under the Individuals with Disabilities Education Act (20
6 USC §§ 1400 et seq.) without parental consent unless authorized to do so under the Family
7 Education Rights and Privacy Act.

8 c. In the event that a parent refuses to provide consent under this section, a local
9 educational agency shall use established policies and procedures.

10 11. Safeguards.

11 a. Each local educational agency shall protect the confidentiality of personally identifiable
12 information at collection, storage, disclosure, and destruction stages.

13 b. One official at each local educational agency shall assume responsibility for ensuring the
14 confidentiality of any personally identifiable information.

15 c. All persons collecting, maintaining, or using personally identifiable information must
16 receive training or instruction on Virginia's policies and procedures for ensuring
17 confidentiality of information.

18 d. Each local educational agency shall maintain, for public inspection, a current listing of
19 the names and positions of those employees within the agency who may have access to
20 personally identifiable information.

21 12. Destruction of information.

22 a. The local educational agency shall inform parents when personally identifiable
23 information collected, maintained, or used under this chapter is no longer needed to
24 provide educational services to the child.

Virginia Special Education Regulations

1 b. The information must be destroyed at the request of the parents. However, a permanent
2 record of a student's name, address, phone number, grades, attendance record, classes
3 attended, grade level completed, and year completed may be maintained without time
4 limitation.

5 c. The local educational agency shall comply with the Records Retention and Disposition
6 Schedule of the Library of Virginia.]

7 8 VAC 20-80-72. Transfer of rights to students who reach the age of majority.

8 [A. All rights accorded to the parent or parents under the Individuals with Disabilities
9 Education Act (20 USC §§ 1400 et seq.) transfer to children upon the age of majority (age 18),
10 including those students who are incarcerated in an adult or juvenile federal, state, regional, or
11 local correctional institution.

12 B. Notification.

13 1. The local educational agency shall notify the parent or parents and the student of the
14 following:

15 a. That educational rights under the Individuals with Disabilities Education Act (20 USC
16 §§ 1400 et seq.) will transfer from the parent or parents to the student upon the student
17 reaching the age of majority. Such notification must be given at least one year prior to the
18 student's eighteenth birthday; and

19 b. That procedures exist for appointing the parent or parents or, if the parent or parents are
20 not available, another appropriate individual, to represent the educational interests of the
21 student throughout the student's eligibility for special education and related services if the
22 student is determined not to have the ability to provide informed consent with respect to the
23 educational program as specified in subsection C of this section.

Virginia Special Education Regulations

1 2. The local educational agency shall include a statement on the IEP (beginning at least one
2 year before the student reaches the age of majority) that the student has been informed of the
3 rights that will transfer to the student on reaching the age of 18.

4 3. The local educational agency shall provide any further notices required under the
5 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to both the student and
6 the parent or parents.

7 4. The local educational agency may continue to invite the parent or parents, as appropriate,
8 as bonafide interested parties knowledgeable of the student's abilities, to participate in
9 meetings where decisions are being made regarding their adult student's educational
10 program.

11 5. The adult student may invite the student's parent or parents to participate in meetings
12 where decisions are being made regarding the student's educational program.]

13 [A. C.] A student who has reached the age of 18 years shall be presumed to be a competent
14 adult, and thus all rights under the Individuals with Disabilities Education Act (20 USC §§ 1400
15 et seq.) shall transfer to the adult student, unless one of the following actions has been taken:

16 1. The adult student [~~has been~~ is] declared legally incompetent or legally incapacitated by a
17 court of competent jurisdiction and a representative has been appointed by the court to make
18 decisions for the student[;:]

19 2. The adult student designates, in writing[,], by power of attorney or similar legal document,
20 another competent adult to be the student's agent to receive notices and to participate in
21 meetings and all other procedures related to the student's educational program. A local
22 educational agency [~~may shall~~] rely on such [~~a-written~~] designation until notified that the
23 authority to act under the designation [~~has been~~ is] revoked, terminated[,], or superseded by
24 court order or by the adult student[;:]

Virginia Special Education Regulations

1 3. The adult student ~~[has been]~~ is] certified, according to the following procedures, as unable
2 to provide informed consent. Any ~~[competent]~~ adult student who ~~[has been]~~ is] found eligible
3 for special education pursuant to this chapter and does not have a representative appointed to
4 make decisions on the adult student's behalf by a court of competent jurisdiction may have
5 an educational representative appointed based on the following certification procedure to act
6 on the student's behalf for all matters described in this chapter~~[-, including all rights accruing~~
7 ~~to the adult student under the Individuals with Disabilities Education Act (20 USC §1400 et~~
8 ~~seq.)~~ and ~~[the to]~~ exercise ~~[of]~~ rights related to the student's ~~school~~ scholastic record. ~~[a.]~~
9 An educational representative may be appointed based on the following conditions and
10 procedures:

11 ~~[(1)] a.] Two professionals (one from list one and one from list two [as set out in the~~
12 following subdivisions,]) ~~[must shall]~~, based on a personal examination or interview,
13 certify in writing that the adult student is incapable of providing informed consent and
14 that the student has been informed of this decision:

15 ~~[(a)] (1)] List one includes (i) a medical doctor licensed in the state where the doctor~~
16 practices medicine; (ii) a physician's assistant whose certification is countersigned by a
17 supervising physician; or (iii) a certified nurse practitioner.

18 ~~[(b)] (2)] List two includes (i) a medical doctor licensed in the state where the doctor~~
19 practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social
20 worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under
21 the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for
22 the adult student.

23 ~~[(2)] b.] The individuals who provide the certification in subdivision 3 a ~~[(1)]~~ of this~~
24 subsection may not be employees of the local educational agency currently serving the
25 adult student or be related by blood or marriage to the adult student.

Virginia Special Education Regulations

1 ~~[(3) c.]~~ Incapable of providing informed consent, as used in this ~~[procedure section]~~,
2 means that the individual is [unable to]:

3 ~~[(a) Unable to understand~~ (1) Understand] the nature, extent and probable consequences
4 of a proposed educational program or option on a continuing or consistent basis;

5 ~~[(b) Unable to make~~ (2) Make] a rational evaluation of the benefits or disadvantages of
6 a proposed educational decision or program as compared with the benefits or
7 disadvantages of another proposed educational decision or program on a continuing or
8 consistent basis; or

9 ~~[(c) Unable to communicate~~ (3) Communicate] such understanding in any meaningful
10 way.

11 ~~[(4) d.]~~ The certification that the adult student is incapable of providing informed consent
12 may be made as early as 60 calendar days prior to the adult student's eighteenth birthday
13 or 65 business days prior to an eligibility meeting if the adult student is undergoing initial
14 eligibility for special education services.

15 ~~[(5) e.]~~ The certification shall state when and how often a review of the adult student's
16 ability to provide informed consent shall be made and why that time period was chosen.

17 ~~[(6) f.]~~ The adult student's ability to provide informed consent must be recertified at any
18 time that the previous certifications are challenged. Challenges can be made by the
19 student or by anyone with a bonafide interest and knowledge of the adult student[, except
20 that challenges cannot be made by employees of local educational agencies]. Challenges
21 must be provided in writing to the local educational agency's ~~director~~ administrator] of
22 special education who then must notify the adult student and current appointed
23 representative.

24 ~~[(a) (1)]~~ Upon receipt of a written challenge to the certification by the adult student, the
25 local educational agency may not rely on an educational representative, appointed

Virginia Special Education Regulations

1 pursuant to ~~[subdivision 3-b~~ subsection D] of this ~~[subsection section,]~~ for any purpose
2 until a designated educational representative is affirmed by a court of competent
3 jurisdiction[;]

4 ~~[(b) (2)]~~ Upon receipt of a written challenge to the certification by anyone with a
5 bonafide interest and knowledge of the adult student, the local educational agency may
6 not rely on an educational representative[,] appointed pursuant to ~~[this procedure~~
7 [subsection D of this section] for any purpose until a more current written certification
8 is provided by the appointed educational representative. Certifications provided after a
9 challenge are effective for 60 calendar days, unless a proceeding in a court of
10 competent jurisdiction is filed challenging and requesting review of the certifications.
11 The local educational agency shall not rely upon the designated educational
12 representative until the representative is affirmed by the court[; or

13 4. The adult student, based on certification by written order from a judge of competent
14 jurisdiction, is admitted to a facility for the training and treatment of the mentally retarded in
15 accordance with §37.1-65.1 of Code of Virginia or in a coma and eligible for admission to a
16 state hospital in accordance with §37.1-65.3 of the Code of Virginia. The state-operated
17 program serving the adult student may rely on the judicial certification and appoint an
18 educational representative to act on the student's behalf during the student's stay at the state-
19 operated program.]

20 ~~[b. D. Upon receiving the written certification of the adult student's inability to provide~~
21 ~~informed consent]~~ If the local educational agency receives written notification of the action in
22 subsection C 3 of this section [or if the state-operated program receives the judicial certification
23 in subsection C 4], the local educational agency shall designate the parent or parents of the adult
24 student to act as an educational representative of the adult student (unless the student is married,
25 in which event the student's adult spouse shall be designated as educational representative).

Virginia Special Education Regulations

1 [1.] If the parent or parents or adult spouse is not available [~~or~~ and] competent to give
2 informed consent, the [~~individual designated by the local educational agency] administrator~~
3 of special education or designee shall designate a competent individual from among the
4 following:

5 [(1) a.] An adult brother or sister;

6 [(2) b.] An adult aunt or uncle; or

7 [(3) c.] A grandparent.

8 [2.] If no [~~one family member] from the previous categories is [~~willing available] and [able~~~~
9 competent] to serve as the adult student's educational representative, [~~then an individual~~
10 (who is not an employee of the local educational agency) shall be designated to serve in
11 this capacity a person trained as a surrogate parent shall be appointed to serve as the
12 educational representative] by the local educational agency.

13 [B. Notification.

14 1. The local educational agency shall notify the parent or parents and the student of the
15 following:

16 a. That educational rights under the Individuals with Disabilities Education Act (20 USC
17 §§ 1400 et seq.) will transfer from the parent or parents to the student upon the student
18 reaching the age of majority. Such notification must be given at least one year prior to the
19 student's eighteenth birthday.

20 b. The procedures for appointing the parent or parents or, if the parent or parents are not
21 available, another appropriate individual, to represent the educational interests of the
22 student throughout the student's eligibility for special education and related services if the
23 child is determined not to have the ability to provide informed consent with respect to the
24 educational program of the student as specified in subsection A of this section.

Virginia Special Education Regulations

1 ~~2. The local educational agency shall include a statement on the IEP (beginning at least one~~
2 ~~year before the student reaches the age of majority) that the student has been informed of the~~
3 ~~rights that will transfer to the student on reaching the age of 18.~~

4 ~~3. The local educational agency shall provide any further notices required under the~~
5 ~~Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to both the student and~~
6 ~~the parent or parents.~~

7 ~~4. The local educational agency may continue to invite the parent or parents, as appropriate,~~
8 ~~as bonafide interested parties knowledgeable of the student's abilities, to participate in~~
9 ~~meetings where decisions are being made regarding their adult child's educational program.~~

10 ~~5. The adult student may invite the student's parent or parents to participate in meetings~~
11 ~~where decisions are being made regarding the student's educational program.~~

12 ~~C. All rights accorded to the parent or parents under the Individuals with Disabilities Education~~
13 ~~Act (20 USC §§1400 et seq.) transfer to children upon the age of majority (18) who are~~
14 ~~incarcerated in an adult or juvenile federal, state, regional, or local correctional institution.]~~

15 8 VAC 20-80-74. Mediation.

16 A. Each local educational agency shall ensure that the parent or parents of a child with a
17 disability are informed of the option of mediation to resolve disputes [involving the local
18 educational agency's proposal to initiate or change the identification, evaluation, or educational
19 placement of the child or the provision of a free appropriate public education to the child], at a
20 minimum, whenever a due process hearing is requested.

21 B. The local educational agency [may shall] use the Virginia Department of Education's
22 mediation process to resolve such disputes. The procedures shall ensure that the process is:

23 1. Voluntary on the part of both the local educational agency and parent;

24 2. Not used to deny or delay a parent's or parents' right to a due process hearing or to deny
25 any other rights afforded under this chapter; and

Virginia Special Education Regulations

1 3. Conducted by a qualified and impartial mediator~~[, from a list maintained by the Virginia~~
2 Department of Education,] who is trained in effective mediation techniques and is
3 knowledgeable in laws and regulations relating to the provision of special education and
4 related services~~[, from a list maintained by the Virginia Department of Education].~~

5 C. The local educational agency may establish procedures to require parents who choose not to
6 use the mediation process to meet, at a time and location convenient to the parent or parents,
7 with a disinterested party who is under contract with~~[:] 1. [A a] parent training and information~~
8 center ~~[established under the Individuals with Disabilities Education Act (20 USC §§ 1400 et~~
9 seq.); or] community parent resource center in Virginia established under ~~[\$ 1482 or § 1485 of]~~
10 the Individuals with Disabilities Education Act (20 USC §§ [1400 et seq. 1482 and 1485]); or 2.
11 [An an] appropriate alternative dispute resolution entity.

12 [1.] The purpose of the meeting is to ~~[encourage the use and]~~ explain the benefits of ~~[the]~~
13 mediation ~~[process to the parent or parents and encourage the parents to use the process].~~

14 [2.] The local educational agency may not deny or delay a parent's or parents' right to a due
15 process hearing if the parent or parents choose not to participate in this meeting.

16 D. In accordance with the Virginia Department of Education's procedures:

17 1. The Virginia Department of Education shall maintain a list of individuals who are
18 qualified mediators and knowledgeable in laws and regulations relating to the provision of
19 special education and related services;

20 2. The mediator shall be chosen on a rotation basis; and

21 3. The Virginia Department of Education shall bear the cost of the mediation process,
22 including costs in subsection C of this section.

23 E. The mediation process shall:

24 1. Be scheduled in a timely manner and held in a location that is convenient to the parties to
25 the dispute;

Virginia Special Education Regulations

1 2. Conclude with a written mediation agreement if an agreement is reached by the parties to
2 the dispute; and

3 3. Guarantee that discussions that occur during the mediation process are confidential and
4 may not be used as evidence in any subsequent due process hearings or civil proceedings.
5 Parties to the mediation process may be required to sign a confidentiality pledge prior to the
6 commencement of the mediation process.

7 F. An individual who serves as a mediator:

8 1. May not be an employee of any local educational agency or the Virginia Department of
9 Education if it is providing direct services to a child who is the subject of the mediation
10 process; ~~and~~

11 2. Must not have a personal or professional conflict of interest~~[-; and]~~

12 ~~[A person who otherwise qualifies as a mediator is~~ 3. Is] not an employee of the local
13 educational agency or the Virginia Department of Education solely because the person is
14 paid by the agency to serve as a mediator.

15 8 VAC 20-80-76. Due process hearing.

16 A. The Virginia Department of Education administers a special education due process hearing
17 system that provides procedures for the training of hearing officers, requests for a hearing,
18 appointment of hearing officers, the management and monitoring of hearings, and the
19 administration of the hearing system. The Virginia Department of Education is responsible for
20 the operation of the due process system; however, the local educational agency shares
21 responsibility for the hearing process by ensuring the timely appointment of officers,
22 communicating with the Virginia Department of Education, assisting with the hearing, and
23 implementing the hearing officer's decision. A hearing officer's decision may be appealed
24 directly to any state court of competent jurisdiction or to a district court of the United States.

25 B. Basis for due process hearing request.

Virginia Special Education Regulations

1 1. Either a parent or parents or a local [school division educational agency] may request a
2 due process hearing when a disagreement arises regarding any of the following:

3 a. Identification of a child with a disability;

4 b. Evaluation of a child with a disability (including disagreements regarding payment for
5 an independent educational evaluation);

6 c. Educational placement and services of the child; and

7 d. Provision of a free appropriate public education to the child.

8 2. A local educational agency may initiate a due process hearing to resolve a disagreement
9 when the parent or parents withhold consent for an action that requires parental consent to
10 provide services to a student who has been identified as a student with a disability or who is
11 suspected [to have of having] a disability.

12 3. In circumstances involving disciplinary actions, [a the] parent or parents of a student with
13 a disability may request an expedited due process hearing if the parent or parents disagree
14 with:

15 a. [If the parent or parents disagree with a A] determination that the child's behavior was
16 not a manifestation of the child's disability; or

17 b. [If the parent or parents disagree with any decision regarding an interim alternative
18 placement Any decision regarding placement under the disciplinary procedures].

19 4. The local educational agency may request an expedited hearing if the school division
20 maintains that it is dangerous for the child to be in the current placement (placement prior to
21 removal to the interim alternative setting) during the pendency of the due process
22 proceedings.

23 C. Procedure for requesting a due process hearing.

Virginia Special Education Regulations

1 1. A request for a hearing [is shall be] made in writing to the local educational agency, with a
2 copy to the Virginia Department of Education. If the request is received solely by the
3 Virginia Department of Education, the Virginia Department of Education [will shall]
4 immediately notify the local educational agency by telephone or by facsimile, and forward a
5 copy of the request to the local educational agency within one day of the Virginia
6 Department of Education's receipt, including those cases where mediation is requested. [The
7 request for a hearing shall be kept confidential by the local educational agency and the
8 Virginia Department of Education.]

9 2. The notice of request must include the following information:

10 a. The name of the child;

11 b. The address of the residence of the child;

12 c. [~~the~~ The] name of the school the child is attending;

13 d. A description of the nature of the child's problem relating to the proposed or refused
14 initiation or change, including facts relating to the problem; and

15 e. A proposed resolution of the problem to the extent known and available to the parent or
16 parents at the time of the notice.

17 ~~2.~~ 3. The local educational agency shall upon receipt of a request for a due process hearing,
18 inform the parent or parents of the availability of mediation described in 8 VAC 20-80-74
19 and of any free or [~~low-cost~~ low-cost] legal and other relevant services available in the area.
20 The local educational agency must also provide the parent or parents with [~~their~~ a] procedural
21 safeguards notice [~~inform the parent or parents of low cost legal services and provide~~
22 procedural safeguards and rights. The local educational agency shall confirm that the
23 mediation option has been explored.

24 ~~3.~~ 4.] The local educational agency shall appoint the hearing officer within five business days
25 of the request for a hearing. The local educational agency contacts the Supreme Court of

Virginia Special Education Regulations

1 Virginia to secure the name of a hearing officer, contacts the hearing officer to confirm
2 availability, and upon acceptance, appoints the hearing officer in writing, with a copy to the
3 Virginia Department of Education. In the case of an expedited hearing, the local educational
4 agency must appoint the hearing officer ~~[must be appointed]~~ within ~~[two three]~~ business days
5 of the request for a hearing.

6 D. Assignment of hearing officer.

7 1. A hearing officer is appointed to a case from a list maintained by the Supreme Court of
8 Virginia.

9 2. Upon a request by the local educational agency, the Supreme Court identifies a hearing
10 officer from its list and provides the name to the local educational agency. ~~[Should If]~~ the
11 first person selected ~~[be is]~~ unavailable or disqualified, the local educational agency shall
12 immediately request another name to ensure ~~[that]~~ a timely appointment is made.

13 3. Upon request, the Virginia Department of Education shall share information on
14 qualifications of the hearing officer with the parent or parents and the local educational
15 agency, and either party has two business days to object ~~[to the appointment]~~ on the basis of
16 conflict of interest.

17 ~~[4. Hearing officers who serve as counsel for the parent or parents or local educational~~
18 ~~agencies are not excluded from the hearing officers list, but a A] hearing ~~[may shall]~~ not be~~
19 ~~conducted by a person ~~[having a personal or professional interest which would conflict with~~~~
20 ~~that person's objectivity in the hearing. If a hearing officer recuses himself or is otherwise~~
21 ~~disqualified, the local educational agency shall ensure that another hearing officer is~~
22 ~~promptly appointed. who:~~

23 a. Has a personal or professional interest which would conflict with that person's
24 objectivity in the hearing;

Virginia Special Education Regulations

1 b. Is an employee of the Virginia Department of Education or the local educational agency
2 that is involved in the education and care of the child. A person who otherwise qualifies to
3 conduct a hearing is not an employee of the agency solely because he is paid by the agency
4 to serve as a hearing officer.

5 c. Represents schools or parents in any matter involving special education or disability
6 rights, or is an employee of any parent rights agency or organization, or disability rights
7 agency or organization.

8 5. If a hearing officer recuses himself or is otherwise disqualified, the local educational
9 agency shall ensure that another hearing officer is promptly appointed.]

10 E. Child's status during administrative or judicial proceedings.

11 1. [~~During~~ Except as provided in 8 VAC 20-80-68 C 4, during] the pendency of any
12 administrative or judicial proceeding, the child must remain in the current educational
13 placement unless the parent or parents of the child and local educational agency agree
14 otherwise[; or]

15 2. If the proceeding involves an application for initial admission to public school, the child,
16 with the consent of the parent or parents, must be placed in the public school until the
17 completion of all the proceedings[; or]

18 3. If the decision of a hearing officer agrees with the child's parent or parents that a change
19 of placement is appropriate, that placement shall be treated as an agreement between the
20 local educational agency and the parent or parents for the purposes of maintaining the child's
21 placement during the pendency of any administrative or judicial appeal proceeding[; or]

22 4. The child's placement during administrative or judicial proceedings regarding a
23 disciplinary action by the local educational agency shall be in accordance with 8VAC 20-80-
24 68[;]

Virginia Special Education Regulations

1 5. The child's placement during administrative or judicial proceedings regarding a placement
2 for non-educational reasons by a Comprehensive Services Act team shall be in accordance
3 with 8 VAC 20-80-66 A 8.]

4 F. Rights of parties in the hearing.

5 1. Any party to a hearing has the right to:

6 a. Be accompanied and advised by counsel and by individuals with special knowledge or
7 training with respect to the problems of children with disabilities;

8 b. Present evidence and confront, cross examine, and request that the hearing officer
9 compel the attendance of witnesses;

10 c. ~~Prohibit~~ Move that the hearing officer prohibit] the introduction of any evidence at the
11 hearing that has not been disclosed to that party at least five business days before the
12 hearing or in the case of an expedited hearing, two business days before the hearing;

13 d. Obtain a written or, at the option of the parent or parents, electronic, verbatim record of
14 the hearing; and

15 e. Obtain written or, at the option of the parent or parents, electronic findings of fact and
16 decisions.

17 2. Additional disclosure of information shall be given as follows:

18 a. At least five business days prior to a non-expedited hearing[;] and two business days
19 prior to an expedited hearing[;] each party shall disclose to all other parties all evaluations
20 completed by that date and recommendations based on the offering party's evaluations that
21 the party intends to use at the hearing[; and]

22 b. A hearing officer may bar any party that fails to comply with the disclosure requirements
23 from introducing the relevant evaluation or recommendation at the hearing without the
24 consent of the other party.

Virginia Special Education Regulations

1 3. Parental rights at hearings.

2 a. A parent or parents involved in a hearing must be given the right to:

3 (1) Have the child who is the subject of the hearing present; and

4 (2) Open the hearing to the public.

5 b. The record of the hearing and the findings of fact and decisions must be provided at no
6 cost to [the parent or] parents.

7 G. Responsibilities of the Virginia Department of Education. The Virginia Department of
8 Education shall:

9 1. Maintain and monitor the due process hearing system and establish procedures for its
10 operation[;]

11 2. Ensure that the local educational agency [is informed of discharges] its responsibilities in
12 carrying out the requirements of state and federal statutes and regulations[;]

13 3. Develop and disseminate a model form to [assist be used by] the parent or parents [in to
14 give notice of the following when] filing a request for [a] due process [that includes hearing:]
15 the name of the child[;:] the address of the residence of the child[;:] the name of the school
16 the child is attending[;:] a description of the nature of the problem of the child relating to the
17 proposed or refused initiation or change, [including facts relating to the problem;] and a
18 proposed resolution of the problem to the extent known and available to the parent or parents
19 at the time [of the notice;]

20 4. Ensure that the hearing is conducted by individuals who are impartial and who are not
21 employees of the Virginia Department of Education or the local educational agency
22 providing education or care of the child, or by anyone with a personal or professional interest
23 that would conflict with [his or her] objectivity in the case[;:]

Virginia Special Education Regulations

1 5. ~~[Assist in ensuring~~ Maintain and ensure] that each local educational agency ~~has~~ maintains
2 a list of persons who serve as hearing officers. This list shall include a statement of the
3 qualifications of each officer[;]

4 6. ~~[The Virginia Department of Education notifies~~ Notify] the Supreme Court of the receipt
5 of either the hearing officer's written decision or other conclusion of the case[; and]

6 7. Provide findings and decisions of all due process hearings to the state advisory committee
7 and to the public after deleting any personally identifiable information.

8 H. Responsibilities of the parent. In a due process hearing, the parent [or parents] shall:

9 1. ~~[Notify the hearing officer~~ Decide] whether the hearing will be open[; to the public;]

10 2. ~~[Ensure that the parent, parents or individuals assisting the parent make~~ Make] timely and
11 necessary responses to the hearing officer personally or through counsel or other authorized
12 representatives[;]

13 3. Assist in clarifying the issues for the hearing and participate in the prehearing conference
14 scheduled by the hearing officer[;]

15 4. ~~[Upon request, provide~~ Provide] information to the hearing officer to assist in the hearing
16 officer's administration of a fair and impartial hearing[;]

17 5. ~~[Upon request, provide~~ Provide] documents and exhibits necessary for the hearing within
18 required timelines[; and]

19 6. Comply with timelines, orders, and requests of the hearing officer.

20 I. Responsibilities of the local educational agency. The local educational agency shall:

21 [1. Maintain a list of the persons serving as hearing officers. This list shall include a
22 statement of the qualifications of each officer;]

Virginia Special Education Regulations

- 1 ~~[1. 2.]~~ Provide the parent or parents a form to assist in the initiation of ~~for]~~ use to provide
2 notice that they are requesting a due process hearing and ~~written~~ a copy of their procedural
3 safeguards[;]
- 4 ~~[2. Upon receipt of the notice, ensure that the notice remains confidential. 3. Maintain the~~
5 confidentiality of the completed notice form and its contents;]
- 6 ~~[3. 4.]~~ Ensure that the parent's or parents' right to a hearing is not delayed or denied for
7 failure to ~~provide the required.~~ complete the notice;]
- 8 ~~[4. 5.]~~ Ensure that a hearing officer is appointed within five business days of ~~[the a]~~ request
9 for a non-expedited hearing and three business days of a request for an expedited hearing[;]
- 10 ~~[5. 6.]~~ Inform the parent or parents at the time the request is made ~~[that mediation is~~
11 available. of the availability of mediation;]
- 12 ~~[6. 7.]~~ Inform the parent or parents of any free or ~~[low-cost low-cost]~~ legal and other relevant
13 services if the parent or parents request it, or anytime the parent, parents, or the local
14 educational agency initiates a hearing[;]
- 15 ~~[7. 8.]~~ Assist the hearing officer, upon request, in securing the location and recording
16 equipment for the hearing[;]
- 17 ~~[8. 9.]~~ Make timely and ~~appropriate~~ necessary responses to the hearing officer[;]
- 18 ~~[9. 10.]~~ Assist in clarifying the issues for the hearing and participate in the pre-hearing
19 conference scheduled by the hearing officer[;]
- 20 ~~[10. 11.]~~ Upon request, provide information to the hearing officer to assist in the hearing
21 officer's administration of a fair and impartial hearing[;]
- 22 ~~[11. 12.]~~ Provide documents and exhibits necessary for the hearing within required
23 timelines[;]
- 24 ~~[12. 13.]~~ Comply with timelines, orders, and requests of the hearing officer[;]

Virginia Special Education Regulations

1 ~~[13. 14.]~~ Maintain a file, which is a part of the child's scholastic record, containing
2 communications, exhibits, decisions, and [the] implementation plan, including mediation
3 communications, except as prohibited by laws or regulations[;]

4 ~~[14. 15.]~~ Forward all necessary communications to the Virginia Department of Education and
5 parties as required[;]

6 ~~[15. 16.]~~ Develop and submit an implementation plan within 45 calendar days of the
7 rendering of a decision or the withdrawal of a hearing request [unless the school division has
8 appealed or is considering an appeal of the decision with the following exception: the appeal
9 or consideration of an appeal of the decision by the local school division] and the decision is
10 not an agreement by the hearing officer with the parent or parents of the child that a change
11 in placement is appropriate. In [those such] cases, the hearing officer's order must be
12 implemented while the case is appealed and an implementation plan must be submitted. Such
13 plan shall be based upon the decision of the hearing officer or agreement between the parties.
14 The implementation plan [must shall] state how and when the decision or agreement will be
15 put into operation. If the case is closed pursuant to a settlement or mediation agreement, that
16 agreement shall be made a part of the implementation plan. If the decision or agreement
17 affects the child's educational program, the revised IEP shall be made a part of the
18 implementation plan. The implementation plan shall contain the name and position of a case
19 manager in the local educational agency charged with implementing the decision. Copies of
20 this plan shall be forwarded to the parties to the hearing, the hearing officer, and the Virginia
21 Department of Education[;]

22 ~~[16. 17.]~~ Notify the Virginia Department of Education [if the local educational agency has
23 knowledge that the case has been filed in court, when the local educational agency is
24 considering an appeal of the hearing officer's decision or when a hearing officer's decision
25 has been appealed to court by either the parent or parents or the local educational agency;
26 and]

Virginia Special Education Regulations

1 ~~[17. 18.]~~ Forward the record of the due process proceeding to the [appropriate] court for any
2 case [that is] appealed [if requested by the court].

3 J. Responsibilities of the hearing officer. The hearing officer shall:

4 1. Affirm, by accepting appointment, that he has complied with all training requirements and
5 agrees to complete the hearing within the regulatory timelines: 45 calendar days if assigned
6 to a [regular non-expedited] due process hearing and [10 20] business days if assigned to an
7 expedited hearing[;]

8 2. Ensure impartiality, and [ensure that decline the appointment if] the hearing officer is [not]
9 an employee of the Virginia Department of Education or of the local educational agency that
10 is involved in the education or care of the child[;]

11 3. Ensure that the rights of all parties are protected and that the laws and regulations
12 regarding the educational placement or services of the child are followed in the conduct of
13 the hearing and in rendering the decision[;]

14 4. Within five business days of appointment, secure a date, time, and location for the hearing
15 that are convenient to both parties, and notify both parties to the hearing and the Virginia
16 Department of Education, in writing, of the date, time, and location of the hearing. If the
17 hearing is an expedited hearing, the hearing officer [must shall] complete these
18 responsibilities within [one day two business days] of appointment[;]

19 5. Ascertain whether [or not] the parties will have attorneys or others assisting them at the
20 hearing. The hearing officer shall send copies of correspondence to the parties and their
21 attorneys[;]

22 6. Conduct a prehearing conference [via a telephone conference call or in person] unless the
23 hearing officer deems such conference unnecessary. The prehearing conference may be used
24 to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference

Virginia Special Education Regulations

- 1 is not held, the hearing officer shall document in the written prehearing report to the Virginia
2 Department of Education the reason for not holding the conference[;]
- 3 7. At the prehearing stage, inform the parties of their rights regarding mediation, of their
4 opportunity to settle the case, and [that] at the end of the hearing and upon receiving the
5 decision, of their right to appeal the case directly to either a state or federal court at their
6 discretion[;]
- 7 8. Monitor the mediation process[,] if the parties agree to mediate[,] to ensure that mediation
8 is not used to deny or delay the right to a due process hearing, [that] parental rights are
9 protected, and [that] the hearing is concluded within regulatory timelines[;]
- 10 9. Ascertain from the parent or parents whether the hearing will be open[; to the public;]
- 11 10. Ensure that the parties have the right to a written or, at the option of the parent or parents,
12 [an] electronic[,] verbatim record of the proceedings[;] and that the record is forwarded to the
13 local educational agency for the file after making a decision[;]
- 14 11. Receive a list of witnesses and documentary evidence for the hearing (including all
15 evaluations and related recommendations that each party intends to use at the hearing) no
16 later than five business days prior to the hearing. If the hearing is an expedited hearing,
17 receipt must be no later than two business days prior to the hearing[;]
- 18 12. Ensure that the local educational agency has appointed a surrogate parent in accordance
19 with 8 VAC 20-80-64 when the parent, parents, or guardian is not available or cannot be
20 located[;]
- 21 13. Ensure that an atmosphere conducive to impartiality and fairness is maintained at all
22 times in the hearing[;]
- 23 14. Not require the parties or their representatives to submit extensive briefs as a condition of
24 rendering a decision[;]

Virginia Special Education Regulations

1 15. Make no presumptions in the case and base findings of fact and decisions solely upon the
2 preponderance of the evidence presented at the hearing and applicable state and federal law
3 and regulations[;:]

4 16. Report findings of fact and decisions in writing to both parties, their attorneys, and the
5 Virginia Department of Education. If the hearing is an expedited hearing, the hearing officer
6 may issue an oral decision at the conclusion of the hearing, followed by a written decision
7 within five business days of the hearing being held[;:]

8 17. Include in the written findings of a [~~regular~~ non-expedited] due process hearing, a
9 determination of whether [~~or not~~] the:

10 a. Requirements of notice to the parent or parents were satisfied;

11 b. Child has a disability;

12 c. Child needs special education and related services; and

13 d. Local educational agency is providing a free appropriate public education[;:]

14 18. Maintain an organized and well-documented record and return the official record to the
15 local educational agency upon conclusion of the case[;:]

16 19. Determine in [a] hearing regarding a manifestation determination whether the local
17 educational agency has demonstrated that the child's behavior was not a manifestation of the
18 child's disability consistent with the following requirements:

19 a. The IEP team first considered, in terms of the behavior subject to disciplinary action, all
20 relevant information, including:

21 (1) Evaluation and diagnostic results, including such results or other relevant information
22 supplied by the parent or parents of the child;

23 (2) Observations of the child; [~~and~~]

24 (3) The child's IEP and placement; and

Virginia Special Education Regulations

1 b. The IEP team then determined that:

2 (1) In relationship to the behavior subject to disciplinary action, the child's IEP and
3 placement were appropriate and the special education services, supplementary aids and
4 services, and behavior intervention strategies were provided consistent with the child's
5 IEP and placement;

6 (2) The child's disability did not impair the ability of the child to understand the impact
7 and consequences of the behavior subject to disciplinary action; and

8 (3) ~~the~~ The child's disability did not impair the ability of the child to control the behavior
9 subject to disciplinary action.

10 c. If the IEP team determined that any of these standards were not met, the behavior must
11 be considered a manifestation of the child's disability[-; and]

12 20. In hearing a case in an expedited due process hearing regarding the authority of local
13 educational agency personnel to change the child's placement to an interim alternative
14 educational placement for up to 45 days:

15 a. Consider ~~[the appropriateness of whether]~~ the child's current placement [is appropriate];

16 b. Consider whether the local educational agency has made reasonable efforts to minimize
17 the risk of harm in the child's current placement, including the use of supplementary aids
18 and services;

19 c. Determine that the local educational agency has demonstrated by substantial evidence
20 that maintaining the current placement of such child is substantially likely to result in
21 injury to the child or to others; and

22 d. Determine that the interim alternative educational setting meets the following
23 requirements:

Virginia Special Education Regulations

1 (1) Is selected so as to enable the child to continue to [~~participate~~ progress] in the general
2 curriculum, although in another setting, and to continue to receive those services and
3 modifications, including those described in the child's current IEP, that will enable the
4 child to meet the goals set out in that IEP; and

5 (2) Includes services and modifications designed to address the behavior so that it does
6 not recur, such as a functional assessment and a positive behavior support plan.

7 K. Authority of the hearing officer. The hearing officer has the authority to:

8 1. Exclude any documentary evidence which was not provided and ~~exclude~~ any testimony of
9 witnesses who were not identified at [~~local educational agencies~~ least] five business days
10 prior to the hearing unless the hearing is an expedited hearing, in which case the information
11 must be received and witnesses identified at least two business days prior to the hearing[;:]

12 2. Bar any party from introducing evaluations or recommendations at the hearing that have
13 not been disclosed to all other parties at least five business days prior to the hearing ([or] two
14 business days if an expedited hearing) without the consent of the other party[;:]

15 3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or
16 other evidence.

17 a. The hearing officer may request an order of enforcement for a subpoena in the circuit
18 court of the jurisdiction in which the hearing is to be held.

19 b. Any person so subpoenaed may petition the circuit court for a decision regarding the
20 validity of such subpoena if the hearing officer does not quash or modify the subpoena
21 after objection [~~thereto~~;:]

22 4. Stop hostile or irrelevant pursuits in questioning and require that the parties and their
23 attorneys, advocates, or advisors comply with the hearing officer's rules and with relevant
24 laws and regulations[;:]

Virginia Special Education Regulations

1 5. Excuse witnesses after they testify to limit the number of expert witnesses present at the
2 same time or sequester witnesses during the hearing[;:]

3 6. Refer the matter in dispute to a conference between the parties when informal resolution
4 and discussion appear to be desirable and constructive. This action shall not be used to
5 deprive the parties of their rights and shall be exercised only when the hearing officer
6 determines that the best interests of the child will be served[;:]

7 7. Require an independent educational evaluation of the child. This evaluation shall be at
8 public expense and shall be conducted in accordance with the regulations governing
9 evaluation and assessment[;:]

10 8. At the request of either party for a non-expedited hearing, grant specific extensions of time
11 beyond the periods set out in this chapter, if in the best interest of the child. This action shall
12 in no way be used to deprive the parties of their rights and should be exercised only when the
13 requesting party has provided sufficient information that the best interests of the child will be
14 served [by the grant of an extension]. The hearing officer may grant such requests for cause,
15 but not [for] attorney convenience. Changes in hearing dates or timeline extensions [~~are to~~
16 shall] be noted in writing and [~~shall be~~] sent to all parties, their attorneys, and to the Virginia
17 Department of Education[;:]

18 9. Take action to move the case to conclusion, including dismissing the pending proceeding
19 if either party refuses to comply in good faith with the hearing [~~officers's~~ officer's] orders[;:]

20 ~~[10. Determine during the prehearing conference whether individuals who are advising the~~
21 ~~parties, other than counsel, have special knowledge or training with respect to the problems~~
22 ~~of children with disabilities and document and communicate any concerns regarding the~~
23 ~~qualifications of such individuals to the parties.~~

24 ~~11. 10.] Set guidelines regarding media coverage if the hearing is open [to the public;:]~~

Virginia Special Education Regulations

1 ~~[12. Identify~~ 11. Enter a disposition as to every issue presented for decision and identify]
2 and determine the prevailing party on each issue that ~~was~~ is] decided[;]

3 ~~[13. 12.]~~ Order a change in the placement of a child with a disability to an appropriate
4 interim alternative educational setting for not more than 45 days if the hearing is an
5 expedited hearing, and after:

6 a. Determining ~~that~~ whether] the ~~public~~ local educational] agency has demonstrated by
7 substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the
8 current placement of such child is substantially likely to result in injury to the child or to
9 others;

10 b. Considering ~~the appropriateness of~~ whether] the child's current placement [is
11 appropriate];

12 c. Considering whether the local educational agency has made reasonable efforts to
13 minimize the risk of harm in the child's current placement, including the use of
14 supplementary aids and services; and

15 d. Determining ~~that~~ whether] the interim alternative educational setting that is proposed by
16 school personnel who have consulted with the child's special education teacher meets the
17 following requirements:

18 (1) Is selected so as to enable the child to continue to ~~participate~~ progress in the general
19 curriculum, although in another setting, and to continue to receive those services and
20 modifications, including those described in the child's current IEP, that will enable the
21 child to meet the goals set out in the IEP; and

22 (2) Includes services and modifications designed to address the behavior so that it does
23 not recur[; and]

24 ~~[14. 13.]~~ In an expedited hearing, determine whether it is dangerous for a child to remain in
25 the current placement (placement prior to removal to the interim alternative educational

Virginia Special Education Regulations

1 setting) during the pendency of due process proceedings. In determining whether the child
2 may be placed in the alternative educational setting or in another appropriate placement
3 ordered by the hearing officer, the hearing officer shall apply the following standards:

4 a. Determine [~~that~~ whether] the local educational agency has demonstrated by substantial
5 evidence that maintaining the current placement of such child is substantially likely to
6 result in injury to the child or to others;

7 b. Consider [~~the appropriateness of~~ whether] the child's current placement [is appropriate];

8 c. Consider whether the local educational agency has made reasonable efforts to minimize
9 the risk of harm in the child's current placement, including the use of supplementary aids
10 and services; and

11 d. Determine [~~that~~ whether] the interim alternative educational setting was determined by
12 the IEP team and meets the following requirements:

13 (1) Is selected so as to enable the child to continue to ~~participate~~ progress in the general
14 curriculum, although in another setting, and to continue to receive those services and
15 modifications, including those described in the child's current IEP, that will enable the
16 child to meet the goals set out in that IEP;

17 (2) Includes services and modifications designed to address the behavior so that it does
18 not recur; and

19 (3) Is for not longer than 45 calendar days and [is] repeated if proper procedures [~~were~~
20 are] followed.

21 e. The procedures in 14 a[~~]~~ through d[~~]~~ of this [~~section~~ subsection] may be repeated as
22 necessary.

23 L. Timelines for [non-expedited due process] hearings. The hearing officer shall:

Virginia Special Education Regulations

1 1. Render a final written decision within 45 calendar days after [a the] request for [the]
2 hearing [is received by the local educational agency;] and, in an expedited hearing, render an
3 oral decision at the conclusion of the hearing, followed by a written decision within five
4 business days of the expedited hearing being held.

5 2. Grant an extension only when it serves the best interests of the child[; and]

6 3. Document in writing within five business days[;] changes in hearing dates or extensions
7 [and within two business days for an expedited hearing] and send [documents
8 documentation] to all parties[;] and the Virginia Department of Education.

9 [M. Timelines for expedited due process hearings. The hearing officer shall:

10 1. Render a final written decision within 20 calendar days after the receipt of the request for
11 the expedited hearing by the local educational agency without exceptions or extensions; and

12 2. Document in writing within two business days any changes in hearing dates and send
13 documentation to all parties and the Virginia Department of Education.]

14 [M. N.] Costs of due process hearing and [attorney's attorneys'] fees.

15 1. The costs of an independent educational evaluation, hearing officer, court reporters, and
16 transcripts which are incidental to the hearing are shared equally by the local educational
17 agency and the Virginia Department of Education. Costs for any [of these] services [initiated
18 incurred] by a party for the specific benefit of that party's case are [covered by the
19 responsibility of] that party.

20 2. The local educational agency is responsible for its own [attorney's attorneys'] fees.

21 3. The parent or parents are responsible for their [attorney's attorneys'] fees. If the parent or
22 parents are the prevailing party, they have the right to petition either a state circuit court or a
23 federal district court for an award of [attorney's reasonable attorneys'] fees [as part of the
24 costs].

Virginia Special Education Regulations

1 4. A state circuit court or a federal district court may award reasonable attorneys' fees as part
2 of the costs to the parent or parents of a child with a disability who is the prevailing party.

3 5. The court may award reasonable attorneys' fees only if the award is consistent with the
4 limitations, exclusions, exceptions, and reductions [set forth] in [accordance with] the
5 Individuals with Disabilities Education Act 1997 (20 USC §§ 1400 et seq.) and its
6 implementing regulations and section 8 VAC 20-80-155 of this chapter.

7 [N. ~~Finality of hearing officer's decision~~ O. Right of appeal].

8 1. A decision by the hearing officer in any hearing, including an expedited hearing [is shall
9 be] final and binding unless the decision is appealed by a party to within one year of the
10 issuance of the decision. The appeal may be filed in either a state circuit court or a federal
11 district court without regard to the amount in controversy. The district courts of the United
12 States have jurisdiction over actions brought under [section 1415 of] the Individuals with
13 Disabilities Education Act 1997 (20 USC §§ [1400 et seq. 1415]) without regard to the
14 amount in controversy.

15 2. On appeal, the court shall receive the record of the administrative proceedings, [may shall]
16 hear additional evidence [and at the request of a party,] shall base its decision on a
17 preponderance of evidence[, and shall grant the relief that the court determines to be
18 appropriate].

19 3. [If the hearing officer's decision is appealed in court implementation of the hearing
20 officer's order is held in abeyance except in those cases where the hearing officer has agreed
21 with the child's parent or parents that a change in placement is appropriate in accordance
22 with subsection E of this section. In those cases, the hearing officer's order must be
23 implemented while the case is being appealed.

24 4.] In every case within 45 days of the final decision of the hearing officer, an
25 implementation plan must be filed by the local educational agency, with copies to the parties,
26 the Virginia Department of Education[, and the hearing officer unless the school division

Virginia Special Education Regulations

1 has appealed or is considering an appeal of the decision and the decision is not an agreement
2 by the hearing officer with the parent or parents of the child that a change in placement is
3 appropriate as noted in subsection [O] 3 ~~above~~ of this section].

4 ~~[4. If the hearing officer's decision is appealed in court and properly served within the 45 day~~
5 ~~period, implementation of the hearing officer's order is held in abeyance except in those~~
6 ~~cases where the hearing officer has agreed with the child's parent or parents that a change in~~
7 ~~placement is appropriate (see subsection E of this section). In those cases, the hearing~~
8 ~~officer's order must be implemented while the case is being appealed.~~

9 5. If the local educational agency does not file an implementation plan, the local educational
10 agency must notify the Virginia Department of Education within 45 days of the issuance of
11 the decision of the hearing officer that the local educational agency is considering appealing
12 the hearing officer's decision or either the local educational agency or the parent or parents
13 have appealed the hearing officer's decision.

14 ~~5. 6.]~~ If the hearing officer's decision is not implemented as required by this chapter, a
15 complaint may be filed with the Virginia Department of Education for an investigation
16 through the state's complaint system.

17 ~~[O; P.]~~ Special authority of the Virginia Department of Education.

18 1. The Virginia Department of Education may take action to ensure that the hearing officer:

19 a. ~~[Has complied]~~ Complies with all training requirements[;:]

20 b. Conducts the hearing in a manner that protects the rights of all parties[;:]

21 c. ~~[Makes]~~ Issues written findings of fact and decisions solely upon the preponderance of
22 the evidence presented at the hearing and applicable state and federal law[;:]

23 d. Provides reports and the decision in writing to both parties and to the Virginia
24 Department of Education[;:]

Virginia Special Education Regulations

1 e. Does not require the submission of burdensome legal research of case law or legal briefs
2 from parties before rendering a decision[; and

3 f. Complies with timelines as specified in this section.

4 2. If the hearing officer does not meet the administrative responsibilities for management of
5 the hearing proceedings in a case, the Virginia Department of Education may take action in
6 the best interest of the child to remove the hearing officer from the case.]

7 [2. 3.] The Virginia Department of Education may impose training and assessment
8 requirements for new and continuing hearing officers as part of the specialized training
9 requirements set by the Supreme Court of Virginia and as otherwise determined by the
10 Virginia Department of Education to be necessary. The Virginia Department of Education
11 may develop training and assessment methodology, including academic or alternative means
12 for completing training requirements. The training requirements may include, but not be
13 limited to, the following topics:

14 a. Knowledge of disabilities and their implications in the education setting;

15 b. Special education law generally, both federal and state;

16 c. Other relevant statutory law;

17 d. Knowledge of special education services and placements including interim alternative
18 educational placements;

19 e. Knowledge of special education standards, procedures[,] and regulations impacting the
20 delivery of educational services to students;

21 f. Skill development and understanding of characteristics unique to disabilities.

22 [3. 4.] The Virginia Department of Education may establish the number of hearing officers
23 who will be trained and certified to hear special education due process cases.

Virginia Special Education Regulations

1 [4: 5.] Any hearing officer who has been suspended or removed pursuant to Rule 4 of the
2 Hearing Officer System Rules of Administration or has withdrawn from the Virginia
3 Supreme Court's hearing officer list shall submit a written petition to the Virginia
4 Department of Education requesting approval to be recertified to hear special education
5 cases.

6 3 [5: 6.] If a special education complaint asserting errors by a hearing officer is received, the
7 Virginia Department of Education may require the hearing officer to respond to the
8 complaint. If the Virginia Department of Education determines that the complainant's
9 allegations are valid, the Virginia Department of Education may disallow any claim for
10 compensation by the hearing officer for responding to the complaint.

11 [7. Any hearing officer who exceeds the timelines as prescribed in this section for reasons
12 unrelated to the best interest of the child and not properly documented prior to the mandated
13 timelines shall be required by the Virginia Department of Education to attend specialized
14 training on these requirements before being assigned to another case.]

15 [P: Q.] Management and monitoring of the [due process] hearing system.

16 1. The Virginia Department of Education shall conduct an analysis of special education
17 hearing officers' decisions and the hearing system procedures that incorporates input from
18 the parties to the hearing. Summary information developed from the analysis will be
19 provided to the Virginia Supreme Court, upon request, and may be utilized by the Supreme
20 Court in its evaluation of hearing officers as required in the Hearing [Officers Officer]
21 System Rules of Administration. Upon request, the Virginia Department of Education shall
22 provide to the Supreme Court information regarding the hearing officer's participation in
23 training, management of the hearing process, actual administration of any hearings, and a
24 review of any decisions rendered.

25 2. Review and analysis of special education hearing officers' decisions.

Virginia Special Education Regulations

1 a. Within 30 calendar days of receipt of the special education hearing officer's decision, the
2 Virginia Department of Education shall review the decision relative to:

3 (1) Apparent bias to either party;

4 (2) Correct use of citations;

5 (3) Readability; and

6 (4) Other errors, such as incorrect names or conflicting data, but not ~~including~~ errors of
7 law which are reserved for appellate review.

8 b. Procedures.

9 (1) In conducting its internal review, the Virginia Department of Education may be
10 assisted by external resources.

11 (2) The Virginia Department of Education may inform the hearing officer in writing of
12 any concerns and may require the hearing officer to issue an error correction or a
13 statement of clarification.

14 ~~Q. R.] Nothing in this chapter prohibits or limits rights under other federal ~~statutes laws~~ or~~
15 regulations.

16 8 VAC 20-80-78. Complaint procedures.

17 A. The Virginia Department of Education maintains and operates a complaint system that
18 provides for the investigation and issuance of findings regarding violations of the rights of ~~the~~
19 ~~parent or~~ parents or children with disabilities. The Superintendent of Public Instruction or his
20 designee is responsible for the operation of the ~~complaints complaint~~ system. The system has
21 the following requirements:

22 B. A complaint may be filed by any individual, organization, or an individual from another
23 state and must:

24 1. Be in writing[;:]

Virginia Special Education Regulations

- 1 2. Be signed by the complainant[;]
- 2 3. Contain a statement that a local educational agency has violated the Individuals with
- 3 Disabilities Education Act (20 USC §§ 1400 et seq.) or these special education regulations;
- 4 and include the facts upon which the complaint is based[;]
- 5 4. Address an action that occurred not more than one year prior to the date the complaint is
- 6 received, unless the Virginia Department of Education determines that a longer period is
- 7 reasonable because the violation is continuing, or the complainant is requesting
- 8 compensatory services for a violation that occurred not more than three years prior to the
- 9 date the complaint is received by the Virginia Department of Education[; and]
- 10 5. Contain all relevant documents.

11 ~~3. C.~~ Upon receipt of a complaint, the ~~Superintendent of Public Instruction or designee~~
12 Virginia Department of Education shall initiate an investigation to determine whether ~~[or not]~~ the
13 ~~LEA against whom such complaint has been filed~~ local educational agency is in compliance with
14 applicable law and regulations; in accordance with the following procedures:

15 4. 1. Within seven ~~administrative~~ business days of the receipt of a ~~written, signed~~ the
16 complaint, the ~~Superintendent of Public Instruction or designee~~ Virginia Department of
17 Education shall send written notification ~~in writing~~ to each complainant and ~~LEA~~ local
18 educational agency against which the violation has been alleged, acknowledging receipt of a
19 complaint ~~[with , and shall send]~~ copies to other appropriate ~~SEA~~ Virginia Department of
20 Education personnel.

21 [a. The notification sent to the local educational agency shall include:

22 (1) A copy of the complaint;

23 (2) An offer of technical assistance in resolving the complaint;

Virginia Special Education Regulations

1 (3) A request that the local educational agency submit within 10 business days of receipt
2 of the letter of notification written documentation that the complaint has been resolved;
3 and

4 (4) If the complaint was not resolved, a request that the local educational agency submit
5 within 10 business days of receipt of the letter of notification a written response,
6 including all requested documentation. A copy of the response, along with all submitted
7 documentation, shall simultaneously be sent by the local educational agency to the
8 complainant if the complaint was filed by the parent or parents of the child, the student,
9 or their attorney. If the complaint was filed by another individual, the local educational
10 agency shall simultaneously send the response and submitted documentation to that
11 individual if a release signed by the parent or parents or student who has reached the age
12 of majority has been provided.

13 ~~a. b.]~~ The notification sent to the complainant [and the local educational agency] shall
14 provide the complainant [and the local educational agency] with an opportunity to submit
15 additional information, ~~either orally or in writing,~~ about the allegations in the complaint,
16 either orally or in writing[, within 10 business days of the receipt of the letter of
17 notification. The Virginia Department of Education shall establish a timeline in the
18 notification letter for submission of any additional information so as not [to] delay
19 completing the investigation within the 60 day regulatory timeline].

20 ~~[b. The notification sent]~~ by the SEA complaint officer [to the] LEA [local educational
21 agency shall include:

22 a. ~~(1)~~ A copy of the complaint;

23 b. ~~(2)~~ An offer of technical assistance in resolving the complaint; and

24 c. ~~(3)~~ A request for written response to the complaint within 10 administrative business
25 days of the receipt of the letter or of notification.]

Virginia Special Education Regulations

1 ~~5.~~ 2. If a reply from the ~~LEA~~ local educational agency is not filed with the ~~Superintendent of~~
2 ~~Public Instruction or designee~~ Virginia Department of Education within 10 ~~administrative~~
3 business days of the receipt of the notice, ~~then the Superintendent of Public Instruction or~~
4 ~~designee~~ Virginia Department of Education shall send a second notice to the ~~LEA~~ local
5 educational agency advising that failure to respond within seven ~~administrative~~ business days
6 of the date of such notice will result in review by the Superintendent of Public Instruction or
7 ~~assistant superintendent~~ designee for action regarding appropriate sanctions.

8 ~~6.~~ The ~~Superintendent of Public Instruction or designee~~ shall take action with respect to the
9 ~~response as follows:~~

10 ~~a.~~ 3. The Virginia Department of Education shall review the complaint and reply filed by the
11 LEA local educational agency to determine if further investigation or corrective action needs
12 to be taken.

13 a. If no further investigation or action is necessary, ~~then the Superintendent of Public~~
14 ~~Instruction or designee~~ Virginia Department of Education shall notify both parties[;] in
15 writing[;] stating the grounds for such finding.

16 ~~b.~~ b. If further investigation is necessary, the Virginia Department of Education shall
17 conduct an investigation of the complaint which shall include a complete review of all
18 relevant documentation and may include an independent on-site investigation, if necessary.

19 c. If the complaint is also the subject of a due process hearing or if it contains multiple
20 issues of which one or more are part of that due process hearing, the Virginia Department
21 of Education shall:

22 (1) Set aside any part of the complaint that is being addressed in the due process hearing
23 until the conclusion of the hearing; and

24 (2) Resolve any issue in the complaint that is not a part of the due process hearing
25 involving the same parties.

Virginia Special Education Regulations

1 d. If an issue raised in the complaint has previously been decided in a due process hearing
2 involving the same parties, the local [state educational agency Virginia Department of
3 Education] shall inform the complainant that the due process hearing decision is binding.

4 4. During the course of the investigation, the Virginia Department of Education shall:

5 e. a. Consider all facts and issues presented and the applicable requirements specified in
6 law, regulations, or standards.

7 e. b. Make a determination of compliance or noncompliance [on each issue] based upon the
8 facts and applicable law~~[, regulations, or standards]~~ and notify the parties~~[,]~~ in writing~~[,]~~ of
9 the findings and the bases for such findings.

10 (1) A time limit of 60 calendar days shall be allowed~~[,]~~ after the written complaint is
11 received~~[,]~~ to carry out the investigation and to resolve the complaint.

12 (2) An extension of the 60 calendar days time limit may occur if exceptional
13 circumstances exist with respect to a particular complaint. Both parties to the complaint
14 will be notified in writing by the ~~Superintendent of Public Instruction or designee~~
15 ~~whenever~~ Virginia Department of Education of the exceptional circumstances ~~exist~~ and
16 ~~specify~~ the extended time limit.

17 c. Ensure that the Virginia Department of Education's final decision is effectively
18 implemented, if needed, through:

19 (1) Technical assistance activities;

20 (2) Negotiations; and

21 (3) Corrective actions to achieve compliance.

22 e. d. Report findings of noncompliance and corresponding recommendations to the party
23 designated by the Superintendent of Public Instruction for review, or where appropriate,
24 directly to the Superintendent of Public Instruction for further action.

Virginia Special Education Regulations

1 ~~7. The Superintendent of Public Instruction or designee will~~ e. Notify the parties in writing
2 of any needed corrective actions and the specific steps which must be taken by the ~~LEA~~
3 local educational agency to bring it into compliance. The ~~LEA~~ local educational agency
4 will be given 15 ~~administrative~~ business days from the date of notice of noncompliance to
5 respond and initiate corrective action.

6 5. In resolving a complaint in which a failure to provide appropriate services is found, the
7 Virginia Department of Education must address:

8 a. ~~[How to remediate~~ The remediation of] the denial of those services, including, as
9 appropriate, compensatory services, [the] awarding [of] monetary reimbursement, or other
10 corrective action appropriate to the needs of the child; and

11 b. Appropriate future provision of services for all children with disabilities.

12 ~~8. Where~~ D. When the ~~LEA~~ local educational agency develops a plan of action to correct the
13 violations, such plan shall include timelines to correct violations not to exceed 30 ~~administrative~~
14 business days unless circumstances warrant otherwise. The plan of action will also include a
15 description of all changes contemplated and shall be subject to approval of the ~~SEA~~ Virginia
16 Department of Education.

17 ~~9. E.~~ E. If the ~~LEA~~ local educational agency does not come into compliance within the period of
18 time set forth in the notification, ~~then~~ the matter will be referred ~~by~~ to the Superintendent of
19 Public Instruction or designee for an agency review and referral to the Virginia Board of
20 Education for a hearing, if deemed necessary.

21 ~~10. F.~~ F. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a
22 hearing by the Virginia Board of Education, finds that the ~~LEA~~ local educational agency has
23 failed to comply with applicable laws and regulations[;] and determines that compliance cannot
24 be secured by voluntary means, then ~~he~~ the superintendent shall issue a decision in writing
25 stating that state and federal funds for the education of children with disabilities shall not be

Virginia Special Education Regulations

1 made available to that ~~LEA~~ local educational agency until there is no longer any failure to
2 comply with the applicable law or regulation.

3 ~~11. Parties to the complaint procedure shall have the right to request the United States~~
4 ~~Secretary of Education to review the final decision.~~

5 [G. Parties to the complaint procedures shall have the right to appeal the final decision to the
6 Virginia Department of Education within 30 calendar days of the issuance of the decision in
7 accordance with the procedures established by the Virginia Board of Education.

8 ~~G. H.]~~ The Virginia Department of Education's complaint procedures shall be widely
9 disseminated to parents and other interested individuals, including parent training and
10 information centers, protection and advocacy agencies, independent living centers, and other
11 appropriate entities.

12 8 VAC 20-80-80. ~~Requirements for establishing~~ Surrogate parent procedures for ~~LEAs and~~
13 ~~applicable state agencies and institutions.~~

14 A. Role of surrogate parent. ~~The surrogate parent requirement in both state and federal laws~~
15 ~~and regulations is intended to ensure appropriate decision making in educational matters. The~~
16 ~~surrogate parent is an advocate acting to serve the best educational interests of a child who is~~
17 ~~suspected of having, or is determined to have, a disability. State and federal regulations require~~
18 ~~that the~~ The surrogate parent ~~represent~~ appointed in accordance with this section represents] the
19 child in all matters relating to:

- 20 1. The identification, evaluation, or educational placement of the child; or
21 2. The provision of a free appropriate public education to the child.

22 B. Appointment of surrogate parents.

- 23 1. Children [~~ages~~ , aged] two to 21, inclusive),] who are suspected of having or determined
24 to have disabilities, ~~whose natural parents or guardians have allowed relatives or private~~
25 ~~individuals to act as parents to the child,~~ do not require a surrogate parent- if

Virginia Special Education Regulations

1 a. The natural parent or parents or guardians ~~[have allowed]~~ are allowing] relatives or
2 private individuals to act as a parent;

3 b. The child is in the custody of the local department of social services or a licensed child
4 placing agency[,] and termination of parental rights has been granted by a juvenile and
5 domestic relations district court of competent jurisdiction ~~[pursuant to]~~ in accordance with]
6 §§ 16.1-283, 16.1-277.01[,] or 16.1-277.02 of the Code of Virginia. The foster parent for
7 that child may serve as the parent ~~[for of]~~ the child for the purposes of any special
8 education proceedings.

9 c. The child is in the custody of a local department of social services or a licensed child
10 placing agency [,] and a permanent foster care placement order has been entered by a
11 juvenile and domestic relations district court of competent jurisdiction ~~[pursuant to]~~ in
12 accordance with] § 63.1-206.1 of the Code of Virginia. The permanent foster ~~[parents~~
13 parent] named in the order for that child may serve as the parent ~~[for of]~~ the child for the
14 purposes of any special education proceedings.

15 2. A surrogate parent shall be appointed for a child, ~~[ages aged]~~ two to 21, inclusive, who is
16 suspected of having or determined to have a disability when:

17 a. No parent ~~[or parents]~~ or person who has been allowed to act as a parent by the natural
18 parents or guardians, as defined in this chapter, can be identified; or

19 b. The LEA local educational agency, after reasonable efforts, cannot discover the location
20 whereabouts of a parent; ~~[or parents]~~.

21 e. The child is a ward of the state.

22 [3. A surrogate parent shall be appointed as the educational representative for a child who
23 reaches the age of majority if the local educational agency has received written notification
24 that the child is not competent to provide informed consent in accordance with 8 VAC 20-80-

Virginia Special Education Regulations

1 72 C 3 or C 4 and no family member is available to serve as the child's educational
2 representative.]

3 ~~[3. A surrogate parent may be appointed for a child who is in the custody of a local social~~
4 ~~services or other child welfare agency, and the parent or parents are known, but, after~~
5 ~~invitation by the local school division in accordance with 8 VAC 20 80 62 D, fails to~~
6 ~~participate in the meetings required by this chapter. The parent or parents shall continue to be~~
7 ~~notified of all meetings and if the parent or parents attend, the parent or parents shall exercise~~
8 ~~their own parental rights.]~~

9 2. 4. [Each The] LEA local educational agency shall establish procedures for identifying
10 children in its jurisdiction who are in need of surrogate parents according to the definition
11 determining whether a child needs a surrogate parent.

12 3. 5. [Each The] LEA local educational agency shall establish procedures for assigning a
13 surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA
14 local educational agency superintendent or designee.

15 a. The appointment having been effected, the LEA local educational agency shall notify in
16 writing:

17 (1) The child with a disability [~~ages , aged] two to 21, inclusive[)], as appropriate to the~~
18 disability;

19 (2) The surrogate parent-appointee;

20 (3) The person charged with responsibility for the child; and

21 (4) The public custodial state agency charged with responsibility for the child, ~~when the~~
22 ~~child is a ward of the state; .~~

23 ~~(5) The SEA.~~

Virginia Special Education Regulations

1 ~~b. LEAs are required to send parents' copy of notice to child's guardian or custodial state~~
2 ~~agency or both. In instances where the LEA has not been able to locate the present~~
3 ~~whereabouts of the parents, a letter to the parents' last known address is evidence of the~~
4 ~~LEA's good faith effort to effect this requirement.~~

5 ~~e.~~ b. The surrogate parent shall serve during[] or for the duration of[] the school year for
6 which ~~he~~ the surrogate parent is appointed.

7 (1) When it has been determined that the child requires a differentiated instructional
8 program as delineated in the IEP, the surrogate parent shall be appointed to serve for the
9 duration of ~~that current document~~ the child's IEP.

10 (2) ~~Should If~~ a the child ~~[require requires]~~ the services of a surrogate parent during the
11 summer months, the ~~LEA~~ local educational agency shall extend the appointment as
12 needed, consistent with timelines required by law.

13 ~~d.~~ c. At the conclusion of each school year, ~~[the]~~ appointment of surrogate parents shall be
14 renewed or not renewed following a review by the ~~LEA~~ local educational agency.

15 4. 6. Each ~~LEA~~ local educational agency shall establish procedures which include conditions
16 and methods for changing or terminating the assignment of a surrogate parent before ~~his~~ that
17 surrogate parent's appointment has expired. Established procedures shall provide the right to
18 request a hearing to challenge the qualifications or termination if the latter occurs prior to the
19 end of the term of appointment. The assignment of a surrogate parent may be terminated only
20 when one or more of the circumstances occur as follows:

21 a. The child reaches the age of majority [~~(except those persons who are of the age of~~
22 ~~majority but who are determined to be~~ and rights are transferred to the child or to] legally
23 dependent and [~~subject to a guardianship or for whom~~] an educational representative [who
24 has been] appointed [for the child] in accordance with the procedures in 8VAC 20-80-72
25 [apply];

Virginia Special Education Regulations

1 b. The child is found no longer eligible for special education services (~~except when~~
2 ~~termination of special education services is being contested~~) and the surrogate parent has
3 consented to the termination of those services;

4 c. Legal guardianship ~~responsible~~ for the child is transferred to a person who is able to
5 carry out the role of the parent;

6 d. [A] The parent or parents, who was whose whereabouts were previously unknown ~~or~~
7 ~~unavailable~~, is are now known [~~or and~~] available; or

8 e. The appointed surrogate parent is no longer eligible (~~see “Qualifications for Surrogate~~
9 ~~Parent”~~) according to subsection D of this section.

10 C. Identification and recruitment of surrogate parents.

11 1. The ~~LEA~~ local educational agency shall develop and maintain a list of individuals within
12 its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for ~~LEAs~~
13 [~~the~~] local educational [agencies agency] to go beyond jurisdictional limits in generating a
14 list of potentially qualified surrogate parents. [~~It should be noted, however, that geographic~~
15 ~~proximity is essential to the relationship between the child with a disability and the surrogate~~
16 ~~parent.~~]

17 2. Individuals who are not on the ~~LEA~~ local educational agency list may be eligible to serve
18 as surrogate parents, subject to the ~~LEA’s~~ local educational agency’s discretion. In such
19 situations, the needs of the individual child and the availability of qualified persons who are
20 familiar with the child and who would otherwise qualify shall be considerations in the ~~LEA’s~~
21 local educational agency’s determination of surrogate eligibility. Other factors which warrant
22 the ~~LEA’s~~ local educational agency’s attention are as follows:

23 a. Consideration of the appointment of a relative to serve as surrogate parent;

24 b. Consideration of the appointment of a foster parent who has the knowledge and skills to
25 represent the child adequately;

Virginia Special Education Regulations

1 c. Consideration of the appointment of a qualified person of the same racial, cultural, ~~and~~
2 or] linguistic background as the child ~~[who is suspected of having or has been identified as~~
3 ~~having a disability]~~; and

4 d. The appropriateness of the child's participation in the selection of ~~his~~ the surrogate
5 parent.

6 D. Qualifications of surrogate parents.

7 1. [Each The] LEA local educational agency shall ensure that a person appointed as a
8 surrogate:

9 ~~1. a.~~ a. Has no interest that conflicts with the interest of the child ~~he represents~~;

10 ~~2. b.~~ b. Has knowledge and skills that ensure adequate representation of the child. The
11 prospective surrogate parent must have completed ~~an SEA~~ a local educational agency
12 approved training session prior to representing the child. ~~The~~ Thereafter, the LEA local
13 educational agency shall provide [annual] training ~~[at least annually, as necessary,]~~ for
14 surrogate parents to ensure that they possess knowledge of special education and related
15 services for children with disabilities, as well as knowledge of the legal requirements
16 necessary to represent the children effectively.

17 ~~3. c.~~ c. Is not an employee of a the Virginia Department of Education, or any other public
18 agency which is involved in the education or care of the child;

19 ~~4. d.~~ d. Is an adult ~~and legal citizen of the United States~~; and

20 ~~5. e.~~ e. Resides in the same general geographic area as the child, whenever possible.

21 2. A local educational agency may select as a surrogate a person who is an employee of a
22 nonpublic agency that only provides noneducational care for the child and who meets the
23 above standards.

Virginia Special Education Regulations

1 3. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency
2 solely because he ~~the person~~ is paid by the agency solely to serve as a surrogate parent.

3 E. Rights of surrogate parents. The surrogate parent, when representing the child's educational
4 interest, has the same rights as those accorded to parents ~~[of children determined or suspected to~~
5 have disabilities under this chapter].

6 8 VAC 20-80-90. Local educational agency administration and governance.

7 A. ~~[Each The]~~ local educational agency shall ensure [that] the rights and protections under this
8 chapter are given to children with disabilities for whom it is responsible, including children
9 placed in private schools.

10 A. ~~B.~~ Plans, applications[,] and reports.

11 1. ~~[Each The] LEA~~ local educational agency [is required to shall] prepare and submit to the
12 appropriate state authority the following Virginia Department of Education, policies and
13 procedures for the provision of special education and related services that comply with all
14 sections of this chapter and other relevant federal and state [statutes laws] and regulations
15 and any revisions to ~~the~~ such] policies and procedures [for the provision of special education
16 and related services.] Local school divisions shall first submit ~~these the~~ policies and
17 procedures and [the] revisions to [the] policies and procedures to their local school board for
18 approval. [State-operated programs, the Virginia School for the Deaf and the Blind at
19 Staunton, and the Virginia School for the Deaf, the Blind and the Multi-Disabled at Hampton
20 shall first submit the policies and procedures to the state special education advisory
21 committee for review.] The policies and procedures shall include:

22 a. ~~To the SEA, by such data as the board may specify, acceptable annual special education~~
23 plan/report and funding applications that:

24 (1) ~~Specify plans for providing free appropriate education and related services to all~~
25 children with disabilities for the following year; and

Virginia Special Education Regulations

- 1 ~~(2) Report on the extent to which the plan for the preceding year has been implemented.~~
- 2 ~~b. To the SEA, a. An application for funding under Part B of Public Law 94-142, 20 USC~~
3 ~~§§ 1411 et seq., as amended, or Public Law 89-313, 20 USC §§ 236 et seq., as amended,~~
4 ~~the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) containing~~
5 ~~assurances of compliance in accordance with various the requirements of the Act and the~~
6 ~~procedures outlined by the SEA Virginia Department of Education.~~
- 7 ~~2. Each LEA shall include the following provisions and assurances in the annual special~~
8 ~~education plan/report and funding applications:~~
- 9 ~~a. A free appropriate public education will be available for each child with a disability,~~
10 ~~ages two to 21, inclusive;~~
- 11 ~~b. All children, ages two to 21, inclusive, residing in the LEA who have disabilities and~~
12 ~~need special education and related services are identified, located, evaluated, and placed in~~
13 ~~an appropriate educational program;~~
- 14 ~~c. Children with disabilities and their parents or guardians are guaranteed procedural~~
15 ~~safeguards in the process of identification, evaluation, or educational placement, or the~~
16 ~~provision of a free appropriate public education;~~
- 17 ~~d. To the maximum extent appropriate, children with disabilities will be educated with~~
18 ~~children who are nondisabled;~~
- 19 ~~e. Confidential records of children with disabilities shall be properly maintained;~~
- 20 ~~f. Testing and evaluative materials used for the purpose of classifying and placing children~~
21 ~~with disabilities are selected and administered so as not to be racially or culturally~~
22 ~~discriminatory;~~
- 23 ~~g. An individualized education program will be maintained for each child with a disability;~~

Virginia Special Education Regulations

- 1 ~~h. A comprehensive system of personnel development to include the in service training of~~
2 ~~general and special education instructional and support personnel related to the needs of~~
3 ~~children with disabilities is provided;~~
- 4 ~~i. There will be ongoing parent consultation;~~
- 5 ~~j. A full educational opportunity goal is provided for all children with disabilities, from~~
6 ~~birth to age 21, inclusive, including appropriate career education, prevocational education,~~
7 ~~and vocational education; and~~
- 8 ~~k. Children with disabilities must be given the right of to participate in the Literacy Testing~~
9 ~~Program (LTP).~~
- 10 b. Progress toward meeting the goals for the performance of children with disabilities [set
11 forth] in [accordance with] subdivision 10 of 8 VAC 20-80-30 and the comprehensive
12 system of personnel development [set forth] in [accordance with] subdivision 11 of 8 VAC
13 20-80-30.
- 14 ~~3. 2. [Each The] LEA local educational agency shall also ensure that all required special~~
15 ~~education [plans, applications, reports, and program evaluations] policies and procedures and~~
16 ~~the revisions to those policies and procedures necessary for ensuring a free appropriate public~~
17 ~~education to a child] are available for public inspection.~~
- 18 ~~B. C.~~ C. Personnel development. [Each The] LEA local educational agency shall establish a
19 program and procedures for the development and implementation of a comprehensive system of
20 personnel development which shall include: that is consistent with the state improvement plan
21 identified in subdivisions [10 12] and [11 13] of 8 VAC 20-80-30.
- 22 ~~1. In service training for all general and special education instruction, related services, and~~
23 ~~support personnel; and~~

Virginia Special Education Regulations

1 ~~2. Procedures to ensure that all personnel who are responsible for the instructional programs~~
2 ~~or delivery of related or support services to children with disabilities are properly certified~~
3 ~~and endorsed.~~

4 ~~[D. Interagency disputes regarding provision of or payment for special education. If a~~
5 ~~participating agency fails to provide or pay for the special education and related services~~
6 ~~described in 8VAC 20-80-30, the local educational agency shall provide or pay for such services~~
7 ~~to the child.~~

8 ~~1. The local educational agency shall use the process developed by the Virginia Department~~
9 ~~of Education in accordance with 8VAC 20-80-20 to resolve any disputes regarding provision~~
10 ~~of or payment for special education and related services.~~

11 ~~2. The local educational agency may claim reimbursement for the services from the public~~
12 ~~agency that failed to provide for such services and such public agency shall reimburse the~~
13 ~~local educational agency pursuant to 8 VAC 20-80-30.~~

14 D. Provision of or payment for special education and related services.

15 1. If any public non-educational agency is otherwise obligated under federal or state law,
16 regulation, or policy to provide or pay for any services that are also considered special
17 education or related services that are necessary for ensuring a free appropriate public
18 education to children with disabilities, the public non-educational agency shall fulfill that
19 obligation or responsibility, either directly or through contract or other arrangement.

20 2. If any public non-educational agency fails to provide or pay for the special education and
21 related services described in subdivision 1 of this subsection, the local educational agency
22 shall provide or pay for the services to the child in a timely manner. The local education
23 agency may then claim reimbursement for the services from the public non-educational
24 agency that failed to provide or pay for the services and that agency shall reimburse the local
25 educational agency in accordance with the terms of the interagency agreement described in
26 VAC 20-80-30, subsection 16, of this chapter.]

Virginia Special Education Regulations

1 ~~C.~~ E. Local advisory committee. [~~There shall be a A~~] local advisory committee for special
2 education[,] appointed by each local school board [~~to shall~~] advise the school board through the
3 division superintendent. The composition of the committee shall include parents of children with
4 disabilities [and persons with disabilities].

5 1. Local school division personnel shall serve only as consultants to the committee.

6 2. The functions of the local advisory committee shall be as follows:

7 a. Advise the local school division of unmet needs in the education of children with
8 disabilities;

9 b. Assist the local school division in the formulation and development of ~~long range plans~~
10 ~~designed to provide needed educational services for children~~ plans for improving
11 performance of [students children] with disabilities [specified in subsection B 1 b of this
12 section];

13 c. Participate in the development of priorities and strategies for meeting the identified
14 needs of children with disabilities;

15 d. Submit periodic reports and recommendations regarding the education of children with
16 disabilities to the division superintendent for transmission to the local school board; [~~and~~]

17 e. Assist the local school division in interpreting plans to the community for meeting the
18 special needs of children with disabilities for educational services[~~;~~ and

19 f. Review the policies and procedures for the provision of special education and related
20 services prior to submission to the local school board and the Virginia Department of
21 Education.]

22 3. Public notice shall be published annually listing the names of committee members and
23 including a description of ways in which interested parties may express their views to the
24 committee.

Virginia Special Education Regulations

1 4. Committee meetings shall be held at least quarterly and shall be open to the public.

2 ~~[5. One meeting shall be designated specifically for the review of the] annual special~~
3 ~~education plan/report and funding applications [policies and procedures for the provision of~~
4 ~~special education and related services prior to submission to the local school board and the~~
5 ~~Virginia Department of Education.]~~

6 D. F. Regional [special education] programs.

7 1. ~~[Where~~ If] it becomes necessary for local school divisions to develop regional ~~[or~~
8 ~~cooperative]~~ programs to serve ~~their~~ children with disabilities residing within their
9 jurisdiction, such regional programs shall be provided in accordance with ~~[the]~~ least
10 restrictive environment requirements specified in 8 VAC 20-80-64.

11 2. ~~[Where~~ If] LEAs local school divisions elect to participate in an approved regional
12 program for the provision of special education and related services for certain children with
13 disabilities, a joint board shall be established to manage and control the jointly owned or
14 operated program, center^[,] or school. Establishment of the joint board^[,] and administration
15 of the jointly [owned and] operated program shall be conducted in accordance with the
16 Virginia Board of Education regulations governing such programs.

17 ~~3. The annual special education plan/report and funding applications of each LEA~~
18 ~~participating in a regional program shall contain a description of its program, activities and~~
19 ~~supervisory involvement as prescribed by the SEA. Each joint board may submit a composite~~
20 ~~annual special education plan/report and funding applications which are composed of~~
21 ~~excerpts from each of the participating LEAs.~~

22 4. 3. Each joint board shall appoint a qualified director who shall be the administrative head
23 of the ~~[cooperative unit regional program]~~. The director shall be responsible for the
24 administration of programs and services which are approved by the ~~[governing body joint~~
25 ~~board]~~.

Virginia Special Education Regulations

1 G. Transition from infant and toddler programs to early childhood special education programs.

2 1. Children [who are] participating in early intervention programs [assisted] under Part C of
3 [IDEA, the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.)] and who
4 will participate in preschool programs [assisted] under Part B [of IDEA,] shall be afforded a
5 smooth and effective transition to [those the] preschool programs in a manner consistent with
6 the Virginia lead agency's Part C early intervention policies and procedures.

7 2. The local [educational agency] school division shall participate in transition planning
8 conferences when notified by the designated local Part C early intervention agency, in
9 accordance with 34 CFR § 303.148(b).

10 H. Programs for children with disabilities in regional or local jails.

11 1. Each local school division with a regional or local jail in its jurisdiction shall be
12 responsible for the provision of special education and related services to all eligible children
13 with disabilities [incarcerated in the jail for more than 10 days].

14 2. Each local [educational agency school division] with a regional or local jail in its
15 jurisdiction shall establish an interagency agreement with the sheriff or jail administrator
16 responsible for the regional or local jail. The interagency agreement shall address staffing
17 and security issues associated with the provision of special education and related services in
18 the jail. A copy of this agreement shall be submitted with the policy and procedures specified
19 in subsection A of this section.

20 PART IV.

21 FUNDING.

22 ~~8 VAC 20-80-100. Reimbursement to LEAs and state-operated programs~~ Eligibility for funding.

23 ~~A. State and federal funds administered by the SEA are disbursed to LEAs and state-operated~~
24 ~~programs in accordance with the following requirements:~~

25 ~~1. Compliance with regulations of the Board of Education including those for accreditation;~~

Virginia Special Education Regulations

1 ~~2. Education programs for children with disabilities shall be operated pursuant to an~~
2 ~~approved annual special education plan/report and funding applications;~~

3 ~~3. Special education teachers, speech language pathologists, school psychologists, visiting~~
4 ~~teachers, school social workers, and supervisors of special education shall meet fully the~~
5 ~~Board of Education licensure and endorsement requirements for such employment;~~

6 A. Each local educational agency school division and state-operated program [must shall]
7 maintain current policies and procedures and supporting documentation to demonstrate
8 compliance with the Virginia Board of Education regulations governing the provision of special
9 education and related services, licensure and accreditation. Changes to the local policies and
10 procedures and supporting documentation shall be submitted upon amendment or revision.
11 Changes [will shall] be made as determined by local need; as a result of changes in state or
12 federal laws or regulations; [or] as a result of required corrective action[; or as a result of
13 decisions reached in administrative proceedings], [court cases judicial determinations], or other
14 findings of noncompliance.

15 ~~4. B.~~ All disbursement is subject to the availability of funds. In the event of insufficient state
16 funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

17 8 VAC 20-80-110. State funds for local school divisions.

18 A. State funds to assist local school divisions with the cost of providing special education and
19 related services for children with disabilities ~~[are shall be]~~ provided through the SEA's Virginia
20 Department of Education's appropriation as follows: provided in this section.

21 ~~4. B.~~ Children with disabilities enrolled in programs operated by a local school board:

22 ~~a. Day 1. Public~~ school programs. In addition to the funds received for each pupil from
23 [state] basic aid, ~~LEAs~~ local school divisions ~~[will shall]~~ receive payment to support the state
24 share of the number of special education teachers and ~~aides~~ paraprofessionals required by the
25 Standards of Quality [(§§ 22.1-253.13:1 et seq.)].

Virginia Special Education Regulations

1 ~~b. 2.~~ Homebound instruction. ~~LEAs shall be reimbursed 60% of the hourly payment to~~
2 ~~teachers employed to provide homebound instruction to eligible children. Such~~
3 ~~reimbursement shall not exceed 60% of an established hourly rate determined annually by~~
4 ~~the department, and shall be in addition to basic aid. Subject to availability, [funds are~~
5 ~~available to] local [educational agencies school divisions shall receive funds] to assist with~~
6 ~~the cost of educating students who are temporarily confined for medical or psychological~~
7 ~~reasons. Such students may continue to be counted in the average daily membership (ADM)~~
8 ~~while receiving homebound instruction. In addition, costs will be reimbursed based on the~~
9 ~~composite index, the hourly rate paid to homebound teachers by the local educational~~
10 ~~agency, and the number of instructional hours delivered. Reimbursement will be made in the~~
11 ~~year following delivery of instruction.~~

12 ~~e. 3.~~ Transportation. ~~Local [educational agencies school divisions] that transport children~~
13 ~~with disabilities, [ages aged] two to 21, inclusive, transported on approved school buses or on~~
14 ~~public transit buses to public schools or approved private schools, pursuant to their IEPs, are~~
15 ~~funded reimbursed in accordance with pupil transportation regulations (8 VAC 20-70-10 et~~
16 ~~seq.).~~

17 ~~2. C.~~ Children with disabilities enrolled in regional special education programs:

18 ~~a. 1.~~ Reimbursement is available for a portion of the tuition costs based on the local
19 ~~composite index computed at 60% as specified by the Virginia Appropriation Act. Rates will~~
20 ~~be approved following procedures established by the Virginia Board of Education. Regional~~
21 ~~special education programs operated by a joint board, or for LEAs local school divisions~~
22 ~~operating a residential program accepting eligible children with disabilities from other local~~
23 ~~school divisions and the Woodrow Wilson Rehabilitation Center are eligible to [participate in~~
24 ~~this program receive reimbursement]. Reimbursement is available to programs offering~~
25 ~~services to children who have one or more of the following disabilities:~~

26 ~~(1) A a.~~ Severe and profound disability;

Virginia Special Education Regulations

- 1 ~~(2) A~~ b. Emotional disturbance;
- 2 ~~(3) c.~~ Autism;
- 3 ~~(4) d.~~ Multiple disabilities;
- 4 ~~(5) e.~~ Deafness;
- 5 ~~(6) A~~ f. Hearing impairment, including deafness;
- 6 ~~(7) g.~~ Deaf-blindness; or
- 7 ~~(8) A~~ h. Traumatic brain injury.

8 ~~b. 2.~~ Such reimbursement shall be in lieu of the [state] per pupil basic [~~operation cost and~~
9 ~~other state~~] aid otherwise available for each child. ~~Decisions regarding the determination of~~
10 ~~reasonable tuition costs and other reasonable charges may be appealed under procedures~~
11 ~~prescribed in the Rules of the Interdepartmental Committee on Rate Setting: The Joint~~
12 ~~Regulations on Rate Setting for Children's Facilities of the Board of Education, the Board of~~
13 ~~Social Services and the Board of Corrections.~~

14 D. Children with disabilities receiving special education and related services in regional or
15 local jails. Local school divisions will be reimbursed for the instructional costs of providing
16 required special education and related services to children with disabilities in regional or local
17 jails.

18 ~~3. E.~~ E. Funds under the Comprehensive Services Act for At-Risk Youth and Families:

19 a. [~~1. Funds are available under the Comprehensive Services Act for At Risk Youth and~~
20 ~~Families to support the state's share of costs for children with disabilities whose IEPs call~~
21 ~~for require private day or private residential placement, or other purchased services, under~~
22 ~~the provisions of the Comprehensive Services Act.~~

23 1. Funds are available under the Comprehensive Services Act to support:

Virginia Special Education Regulations

1 a. The cost of special education and related services for children with disabilities whose
2 IEPs specify private day or private residential placement;

3 b. The cost of certain non-special education services for children with disabilities whose
4 Comprehensive Services Act team identifies that such services are necessary to maintain
5 the child in a less restrictive special education setting, in accordance with Comprehensive
6 Services Act requirements; and

7 c. The cost of special education and related services for children with disabilities who are
8 placed by a Comprehensive Services Act team in a private residential placement for non-
9 educational reasons.]

10 ~~[a. 2.]~~ Local school divisions shall be responsible for payment of transportation expenses
11 associated with implementing the child's IEP.

12 ~~[b. 3.]~~ Comprehensive Services Act reimbursement requirements shall be applicable.

13 ~~[c. In the event that there is a dispute between the local school division and the~~
14 ~~Comprehensive Services Act team regarding implementation of or payment for services in~~
15 ~~the child's IEP, the local school division shall ensure that services are provided in~~
16 ~~accordance with the IEP while the dispute is being resolved. The provisions of subdivision~~
17 ~~14 of 8 VAC 20-80-30 shall apply.]~~

18 ~~b. [2. 4.]~~ When a parent unilaterally places a child with a disability in an approved private
19 nonsectarian school for children with disabilities, the ~~LEA~~ local school division shall not be
20 responsible for the cost of the placement. If a hearing officer ~~or reviewing officer~~ or court
21 determines that such placement, rather than the IEP proposed by the ~~LEA~~ local school
22 division, is appropriate and no appeal is perfected from that decision, the ~~LEA~~ local school
23 division is responsible for placement and funds are available under the Comprehensive
24 Services Act to support the ~~[state's share of]~~ costs.

Virginia Special Education Regulations

1 4. F. Reimbursement for educating children with disabilities placed in receiving foster care or
2 noncustodial foster care across geographic boundaries and educated in the local school division
3 shall be made in accordance with procedures established by the SEA Virginia Department of
4 Education.

5 8 VAC 20-80-120. Federal funds.

6 A. Federal funds are available under Part B of ~~Public Law 94-142, as amended, 20 USC~~
7 ~~§§ 1411 et seq., the Individuals with Disabilities Education Act, [(20 USC §§ 1400 et seq.)], to~~
8 assist local school divisions educational agencies with the excess cost of providing special
9 education and related services for to eligible children with disabilities ages two to 21, inclusive.
10 The application for such funds is submitted local educational agency must submit an annual
11 application to the SEA according to applicable federal requirements Virginia Department of
12 Education describing the use of such funds.

13 B. In order to qualify for Part B funds, a ~~LEA local [educational agency school division]~~ must
14 spend as much in state and local funds on ~~elementary~~ children with disabilities as on ~~elementary~~
15 ~~nondisabled~~ children, and as much on ~~secondary children with disabilities as on secondary~~
16 ~~nondisabled children~~ without disabilities.

17 C. Part B funds may not be used to supplant state and local expenditures for special education
18 and related services, and shall not be used to reduce the level of expenditures for the education of
19 children with disabilities made by the local educational agency school division from the local
20 funds below the level of those expenditures for the preceding year, except under certain
21 conditions specified under the Individuals with Disabilities Education Act (20 USC §§ 1400 et
22 seq.).

23 D. The ~~entitlement~~ amount of Part B funds determined to be available for each ~~LEA local~~
24 educational agency [is shall be] based upon the ~~unduplicated number of children with disabilities~~
25 certified by the division superintendent as receiving special education and related services on

Virginia Special Education Regulations

1 ~~December 1 of the prior year~~ formula specified under the Individuals with Disabilities Education
2 Act (20 USC §§ 1400 et seq.).

3 ~~E. Children with disabilities transferred from state operated programs to LEAs may be served~~
4 ~~with funds applied for in accordance with the provisions of Public Law 89 313, as amended, 20~~
5 ~~USC §§ 236 et seq. However, no child included in the count for Public Law 94 142, as amended,~~
6 ~~20 USC §§ 1411 et seq., is eligible to be counted for funding under Public Law 89 313, as~~
7 ~~amended, 20 USC §§ 236 et seq.~~

8 E. A local educational agency may use Part B funds to implement a schoolwide program under
9 § 1114 of the Improving America's School Act (Title I) (20 USC §§ 1001 et seq.), but the
10 amount of Part B funds used in any fiscal year shall not exceed [(+)] the amount of total Part B
11 funds received that year, divided by the number of children with disabilities in the jurisdiction,
12 and multiplied by [(+)] the number of children with disabilities participating in the schoolwide
13 program. Part B funds used for this purpose are not subject to other Part B funding requirements,
14 but the local educational agency must ensure that all children with disabilities in schoolwide
15 program schools:

- 16 1. Receive services in accordance with a properly developed IEP; and
17 2. Are afforded all of the rights and services guaranteed to children with disabilities under the
18 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

19 ~~F. [Permissive use of funds.]~~ Children without disabilities may benefit from the expenditure of
20 Part B funds when special education and related services and supplementary aids and services
21 are provided in a regular class or other education-related setting to a child with a disability in
22 accordance with the IEP of the child.

23 [G. A local educational agency may not use more than five percent of the money it receives
24 under Part B of the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) for any
25 fiscal year to develop and implement a coordinated services system designed to improve results
26 for children and families, including children with disabilities and their families. The conditions

Virginia Special Education Regulations

1 specified by the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) shall
2 apply.

3 ~~G. H.]~~ If the Virginia Department of Education determines that a local school division is
4 adequately providing a free appropriate public education to all children with disabilities residing
5 in the area served by that school division with state and local funds, the department may
6 reallocate any portion of the funds under Part B of the Individuals with Disabilities Education
7 Act (20 USC §§ 1400 et seq.) that are not needed by the school division to provide a free ~~and~~
8 appropriate public education to other school divisions in the state that are not adequately
9 providing special education and related services to all children with disabilities residing in the
10 areas they serve.

11 ~~H. I.]~~ In any fiscal year in which the percentage increase in the state's Part B allocation
12 exceeds the rate of inflation, a portion as defined by the federal regulations of the state's grant
13 must be awarded to the local educational agency to assist them in providing direct services and in
14 making systemic change to improve results for children with disabilities. The ~~[state~~ Virginia
15 Department of Education] may establish priorities in awarding these subgrants competitively or
16 on a targeted basis.

17 8 VAC 20-80-130. Funds ~~for~~ to assist with the education of children with disabilities residing in
18 state-operated programs.

19 Funds to assist with the education of children with disabilities residing in state operated
20 facilities are available as follows:

21 4. A. ~~[Children in state~~ State] mental health facilities. State funds for special education and
22 related services for children in state mental health facilities are appropriated to the Virginia
23 Department of Education. Local funds for such education shall be an amount equal to the
24 required local per pupil expenditure for the period during which a local school division has a
25 child in residence at a state mental health facility. Such amount shall be transferred by the
26 Virginia Department of Education from the local school division's basic aid funds ~~[to the mental~~

Virginia Special Education Regulations

1 health facilities]. Federal funds are available under the provisions of ~~Public Law 89 313, as~~
2 ~~amended, 20 USC §§ 236 et seq~~ the Individuals with Disabilities Education Act (20 USC
3 §§ 1400 et seq.).

4 2. B. [~~Children in state~~ State] training centers for the mentally retarded. State funds for special
5 education and related services for children with disabilities in state training centers for the
6 mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and
7 Substance Abuse Services. Local funds for such education shall be an amount equal to the
8 required local per pupil expenditure for the period during which a local school division has a
9 child in residence at a state mental retardation facility. Such amount shall be transferred by the
10 Virginia Department of Education from the local school division's basic aid funds [to the
11 centers]. Federal funds are available under the provisions of ~~Public Law 89 313, as amended, 20~~
12 ~~USC §§ 236 et seq~~ the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

13 3. C. [~~Children in state~~ State] specialized children's hospitals. State funds ~~are provided~~ for
14 special education and related services ~~in the special education appropriation~~ are appropriated to
15 the Virginia Department of Education. Federal funds are available under the provisions of ~~Public~~
16 ~~Law 89 313, as amended, 20 USC §§ 236 et seq.~~ the Individuals with Disabilities Education Act
17 (20 USC §§ 1400 et seq.).

18 4. D. [~~Children in~~] Woodrow Wilson Rehabilitation Center. State funds for ~~special~~ education
19 ~~and related services~~ for children are ~~derived from the special education appropriation~~
20 appropriated to the Virginia Department of Education. Federal funds are available under the
21 provisions of ~~Public Law 89 313, as amended, 20 USC §§ 236 et seq~~ the Individuals with
22 Disabilities Education Act (20 USC §§ 1400 et seq.).

23 5. E. [~~Children in regional~~ Regional and local] juvenile detention homes. State funds for
24 ~~special education services~~ are ~~available from the special education appropriation~~ appropriated to
25 the Virginia Department of Education.

Virginia Special Education Regulations

1 ~~6.~~ F. State-operated diagnostic clinics. State funds for the employment of educational
2 consultants assigned to child development and other specialty clinics operated by the state
3 Department of Health are ~~derived from the special education appropriation~~ appropriated to the
4 Virginia Department of Education.

5 ~~7.~~ G. Virginia Department of Correctional Education. State funds for the education of children,
6 including children with disabilities, are appropriated to the Virginia Department of Correctional
7 Education for the education of all children residing in state ~~operated~~ adult or juvenile
8 correctional facilities and juveniles committed to the Department of Juvenile Justice and placed
9 in a private facility under contract with the Department of Juvenile Justice. Federal funds are
10 available under the provisions of ~~Public Law 94-142, as amended, 20 USC §§ 236 et seq~~ the
11 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

12 [H. Virginia School for the Deaf and the Blind at Staunton, and the Virginia School for the
13 Deaf, Blind and Multi-Disabled at Hampton. State funds are appropriated directly to these
14 schools to operate day and residential special education programs for children placed by local
15 school divisions. Local funds for the education of children at the schools shall be the amount
16 equal to the local per pupil expenditure for the period in which the child is a resident of the
17 school. Such amount shall be transferred by the Virginia Department of Education from the
18 local school division's basic aid funds to the schools.]

19 8 VAC 20-80-140. Funding, withholding, and recovery of funds.

20 A. The ~~SEA~~ Virginia Department of Education shall disburse funds to ~~LEAs~~ local educational
21 agencies for the education of children with disabilities [~~ages, aged~~] two to 21, inclusive[),] when
22 they provide documentation of compliance with state and federal laws and regulations.

23 B. [~~Where~~ If] documentation of compliance is not submitted or is inadequate, the
24 Superintendent of Public Instruction shall notify the ~~LEA~~ local educational agency that state and
25 federal funds will not be available for reimbursement for special education programs and
26 services.

Virginia Special Education Regulations

1 1. The notification shall include the substance of the alleged violation, and the ~~LEA~~ local
2 educational agency shall be given an opportunity to submit a written response; and

3 2. The ~~LEA~~ local educational agency shall have the right to appeal to the Virginia Board of
4 Education under 8 VAC 20-80-150 ~~of this part~~.

5 C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a
6 hearing under 8 VAC 20-80-150 ~~of this part~~, finds that ~~an LEA~~ a local educational agency has
7 failed to comply with the ~~Board of Education~~ state and federal laws and regulations and
8 determines that compliance cannot be secured by voluntary means, ~~then the superintendent~~
9 Superintendent shall issue a decision in writing stating that state and federal funds for the
10 education of eligible children with disabilities shall not be made available to that ~~LEA~~ local
11 educational agency until it complies with the ~~Board of Education~~ state and federal laws and
12 regulations.

13 D. [~~Where~~ If] there is evidence that a child has been erroneously classified and thereby counted
14 as eligible for state and federal special education funds and such evidence is challenged by the
15 ~~LEA~~ local educational agency, the foregoing due process procedures shall apply.

16 E. [~~Where~~ If] it is determined that such funds have been erroneously claimed, the ~~SEA~~
17 Virginia Department of Education shall bill the ~~LEA~~ local educational agency for the amount of
18 funds improperly received ~~or withhold an equal amount of state or federal funds for the~~
19 ~~following year~~ [and withhold an equal amount of state or federal funds for the following year if
20 not repaid by the local educational agency].

21 8 VAC 20-80-150. Appeal of administrative decision regarding funding.

22 A. The ~~SEA~~ Virginia Department of [~~Education~~ Education's] recommendation to disapprove
23 ~~an LEA annual special education plan/report and funding applications~~ local eligibility for
24 funding under Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) ~~or,~~ to
25 withhold [~~special education~~ state and federal] funds [for special education and related services],

Virginia Special Education Regulations

1 or to disapprove rates set for the regional special education programs may be appealed by an
2 LEA a local educational agency.

3 B. The procedures for the appeal of administrative decisions are as follows:

4 1. The LEA local educational agency must request[;] in writing[;] a hearing by the SEA
5 Virginia Department of Education within 30 ~~administrative working~~ business days from the
6 receipt of notification from the Superintendent of Public Instruction;

7 2. Within 10 ~~administrative working~~ business days from the date of request for a hearing, the
8 Superintendent of Public Instruction shall notify the LEA local educational agency in writing
9 of the date, time[,] and location of the hearing;

10 3. The hearing shall ~~transpire~~ be conducted within 15 ~~administrative working~~ business days
11 from the date of notification;

12 4. The hearing ~~board~~ shall be ~~composed of the following persons:~~ conducted by an
13 independent hearing officer appointed from a list maintained by the Supreme Court of
14 Virginia;

15 a. ~~Two persons from the SEA who were not participants in the contested decision; these~~
16 ~~persons shall be appointed by the Superintendent of Public Instruction; and~~

17 b. ~~Two members of the State Special Education Advisory Committee to be appointed by~~
18 ~~the chairman of the committee;~~

19 5. Witnesses and attorneys may be present and testify for the SEA Virginia Department of
20 Education or the LEA local educational agency;

21 6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

22 7. The hearing ~~board~~ officer shall review all pertinent evidence presented and shall ~~make a~~
23 ~~written recommendation to the Board of Education which will~~ render a decision based on the

Virginia Special Education Regulations

1 preponderance of evidence presented at the hearing and [on] applicable state and federal law;
2 and

3 8. The decision made by the Board of Education is final, unless a party appeals to a state
4 court of competent jurisdiction or federal district court. No later than 10 business days after
5 the hearing, the hearing officer shall issue a written ruling, including findings of fact and
6 reasons for the findings;

7 9. The decision made by the hearing officer [is shall be] final unless an appeal is requested by
8 a local educational agency;

9 10. If the Virginia Department of Education does not rescind its final action after a review
10 under this subsection, the applicant may appeal to the U.S. Secretary of Education under the
11 provisions of the Education Department General Administrative Regulations; and

12 11. Notice of appeal [must shall] be filed within 30 business days after the local educational
13 agency has been notified by the Virginia Department of Education of the results of the
14 hearing.

15 8 VAC 20-80-152. Use of public and private insurance.

16 A. Children with disabilities who are covered by public insurance.

17 1. A local educational agency may use [the] Medicaid or other public insurance benefits
18 programs in which a child participates to provide or pay for services required under this
19 chapter and as permitted under the public insurance program, except as provided in
20 subsection A 2 of this section].

21 2. With regard to services required to provide a free appropriate public education to an
22 eligible child with a disability, a local educational agency:

23 a. May not require the parent or parents to sign up for or enroll in public insurance
24 programs in order for their child to receive a free appropriate public education;

Virginia Special Education Regulations

1 b. May not require the parent or parents to incur any out-of-pocket expense[,] such as the
2 payment of a deductible or co-pay amount incurred in filing a claim for services provided
3 pursuant to this section, but in accordance with subsection C of this section] may pay the
4 cost that the parent or parents otherwise would be required to pay; and

5 c. May not use a child's benefits under a public insurance program if that use would:

6 (1) Decrease available lifetime coverage or any other insured benefit;

7 (2) Result in the family's paying for services that would otherwise be covered by the
8 public insurance program and that are required for the child outside of the time the child
9 is in school;

10 (3) Increase premiums or lead to the discontinuation of insurance; or

11 (4) Risk loss of eligibility for home and community-based waivers, based on aggregate
12 health-related expenditures.

13 B. Children with disabilities who are covered by private insurance.

14 1. With regard to services required to provide a free appropriate public education to an
15 eligible child under this ~~part~~ chapter, a local educational agency may access a parent's [~~or~~
16 ~~parents~~'] private insurance proceeds only if the parent [~~or parents provide~~ provides] informed
17 consent as defined by this chapter.

18 2. Each time the local educational agency proposes to access [~~the~~ a] parent's [~~or parents~~']
19 private insurance proceeds, it must:

20 a. Obtain informed parental consent; and

21 b. Inform the parent [~~or parents~~] that [~~their~~ the] refusal to permit the local educational
22 agency to access [~~their~~ his or her] private insurance does not relieve the local educational
23 agency of its responsibility to ensure that all required services are provided at no cost to the
24 parent or parents.

Virginia Special Education Regulations

1 [C. Use of Part B funds.

2 1. If a local educational agency is unable to obtain parental consent to use the parent's private
3 insurance, or public insurance when the parent would incur a cost for a specified service
4 required under this chapter to ensure a full appropriate public education, the local educational
5 agency may use its Part B funds under the Individuals with Disabilities Education Act (20
6 USC §§ 1400 et seq.) to pay for the service.

7 2. To avoid financial cost to a parent who otherwise would consent to use private insurance,
8 or public insurance if the parent would incur a cost, the local educational agency may use its
9 Part B funds to pay the costs the parent otherwise would have to pay to use the parent's
10 insurance (e.g., deductible or co-pay amounts).]

11 [~~C.~~ D.] Proceeds from public or private insurance.

12 1. Proceeds from public or private insurance will not be treated as program income for
13 purposes of the Education Department General Administrative Regulations.

14 2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid)
15 for services under this [~~part~~ chapter], those funds will not be considered state or local funds
16 for purposes of the maintenance of effort provisions.

17 [~~D.~~ E.] Nothing in this [~~part~~ chapter] should be construed to alter the requirements imposed on
18 a state Medicaid agency[₂] or any other agency administering a public insurance program by
19 federal [~~statute~~ law], regulations[₂] or policy under Title XIX[₂] or Title XXI of the Social
20 Security Act, or any other public insurance program.

21 8 VAC 20-80-155. Attorneys' fees.

22 A. In any action or proceeding brought under [~~8 VAC 20-80-76,~~ the Individuals with
23 Disabilities Education Act (20 USC §§ 1415)] the court[₂] in its discretion[₂] may award
24 reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability
25 who is the prevailing party.

Virginia Special Education Regulations

1 1. Funds under Part B [~~of the Act~~] may not be used to pay attorneys' fees or costs of a party
2 related to an action or proceeding under [Section 1415 and] subpart E of the Individuals with
3 Disabilities Education Act (20 USC §§ 1400 et seq.).

4 2. This section does not preclude a local educational agency from using funds under the
5 Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) for conducting an
6 action or proceeding under ~~8-VAC 20-80-76~~ Section 1415 of the Act.

7 B. A court [~~awards shall award~~] reasonable attorneys' fees under [~~8-VAC 20-80-76~~ Section
8 1415 of the Act] consistent with the following:

9 1. Determination of amount of attorneys' fees. Fees awarded under [~~8-VAC 20-80-76~~ Section
10 1415 of the Act] must be based on rates prevailing in the community in which the action or
11 proceeding arose for the kind and quality of services furnished. No bonus or multiplier may
12 be used in calculating the fees awarded under this subsection.

13 2. Prohibition of attorneys' fees and related costs for certain services.

14 a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any
15 action or proceeding under [~~8-VAC 20-80-76~~ Section 1415 of the Act] for services
16 performed subsequent to the time of a written offer of settlement to a parent or parents if:

17 (1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil
18 Procedure or, in the case of an administrative proceeding, at any time more than 10
19 [calendar] days before the proceeding begins;

20 (2) The offer is not accepted within 10 [calendar] days; and

21 (3) The court or administrative hearing officer finds that the relief finally obtained by the
22 parent or parents is not more favorable to the parent or parents than the offer of
23 settlement.

24 b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the
25 meeting is convened as a result of an administrative proceeding or judicial action, or for a

Virginia Special Education Regulations

1 mediation described in this chapter that is conducted prior to the filing of a request for due
2 process under this chapter.

3 3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision
4 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent or
5 parents who are the prevailing party and who [was were] substantially justified in rejecting
6 the settlement offer.

7 4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this
8 subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under
9 this chapter, if the court finds that:

10 a. The parent or parents, during the course of the action or proceeding, unreasonably
11 protracted the final resolution of the controversy;

12 b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably
13 exceeds the hourly rate prevailing in the community for similar services by attorneys of
14 reasonably comparable skill, reputation, and experience;

15 c. The time spent and legal services furnished were excessive considering the nature of the
16 action or proceeding; or

17 d. The attorney representing the parent or parents did not provide to the [school district
18 local educational agency] the appropriate information in the notice to request a due process
19 [compliant hearing] in accordance with this chapter.

20 5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of
21 this subsection do not apply in any action or proceeding if the court finds that the state or
22 local educational agency unreasonably protracted the final resolution of the action or
23 proceeding or there was a violation of [Section 1415 of] the Individuals with Disabilities
24 Education Act (20 USC §§ 1400 et seq.).

Virginia Special Education Regulations

PART V.

ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND
INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH DISABILITIES
IN RESIDENCE OR CUSTODY.

8 VAC 20-80-160. ~~Provision of special education to~~ Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education ~~and at least which~~ is comparable to that ~~which would be~~ provided to ~~such~~ children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to [the] Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice.

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia ~~Schools~~ School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton].

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities.

Virginia Special Education Regulations

1 d. The Virginia Board of Education shall provide for and direct the education of school age
2 residents in state mental health facilities in cooperation with the Department of Mental
3 Health, Mental Retardation and Substance Abuse Services.

4 e. The Virginia Board of Education shall prepare and supervise the education and training
5 provided to children in regional and local detention homes.

6 f. The Virginia Board of Education shall supervise the evaluation, education[,] and training
7 provided to school-age children by the Virginia Department of Health and to school-age
8 children in the [child's] teaching hospitals associated with the Medical College of Hampton
9 Roads, [The the] Medical College of Virginia Hospitals, and the University of Virginia
10 Hospitals.

11 2. The procedures outlined in Part III, Responsibilities of LEAs and State Agencies, of this
12 chapter (8 VAC 20-80-40 et seq.) 8 VAC 20-80-90 are applicable to each state board,
13 agency[,] and institution having children with disabilities in residence and custody.

14 ~~8 VAC 20-80-170.~~ B. Annual [program] plan. Each state board, agency, and institution having
15 responsibility for providing such education and training shall submit annually to the ~~SEA~~
16 Virginia Department of Education for approval by the Virginia Board of Education its program
17 plan for the education and training for children with disabilities in residence or custody. This
18 program plan, to be submitted by the date and in the manner specified by the Virginia Board of
19 Education, shall include the provisions and assurances as specified in 8 VAC 20-80-90 ~~of this~~
20 ~~chapter~~. In addition, the program plan shall include the following:

21 1. The educational objectives of the state board, agency, or institution;

22 2. Strategies for achieving the educational objectives, including an organized program for
23 staff development;

24 3. A system of communication between educational and other personnel, including treatment
25 and residential care staff, to ensure coordination of program objectives;

Virginia Special Education Regulations

1 4. A system of communication to [~~assure~~ ensure] service continuity in the transition of the
2 student into and out of the educational program of the facility, and, where applicable, the
3 requirements for re-enrollment of juveniles committed to the Department of Juvenile Justice,
4 as provided for in the Code of Virginia;

5 5. An assessment plan for determining the extent to which the objectives have been achieved
6 including, where practicable, follow-up studies of former students to assist in annual program
7 evaluation;

8 6. A system of communication between the state board, agency, or institution and its
9 employees, whereby the views of all educational employees may be received in an orderly
10 and constructive manner [~~in matters of concern to them~~];

11 7. A cooperatively developed procedure for the evaluation of educational personnel;

12 8. The grievance procedures regarding educational personnel as prescribed by the state or the
13 appropriate local agency or board;

14 9. A comprehensive system of personnel development to include the ~~in-service~~ training of
15 general and special education instructional ~~and~~ personnel, support personnel, and
16 paraprofessionals related to the educational needs of children in residence is provided as
17 required under 8 VAC 20-80-30;

18 10. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week
19 [~~is~~] available for each student ~~to implement his IEP;~~ to implement the student's IEP 11. ~~A~~
20 ~~waiver statement is on file for each.~~

21 [a.] If a student whose has a medical or physical condition that requires modification of the
22 school schedule, a waiver statement shall be placed on file.

23 [b.] This waiver statement shall document the physical or mental condition of the
24 individual student which requires significant modification of this schedule, and [~~there shall~~
25 ~~be on file statements of concurrence by the principal, supervisor or educational director and~~

Virginia Special Education Regulations

1 ~~other personnel as follows~~ personnel from the following facilities shall file statements of
2 concurrence]:

3 [~~a. Department of Mental Health, Mental Retardation and Substance Abuse Services~~
4 ~~facilities attending physician;~~

5 ~~b. Department of Correctional Education -] treatment team [central review committee or~~
6 ~~institute review committee or Department of Juvenile Justice physician or psychologist for~~
7 ~~medical or psychological conditions; in addition a waiver statement signed by] or~~
8 ~~[Department of Juvenile Justice security staff or designee for safety or security conditions;]~~

9 e. ~~School for the deaf and the blind - physician, staffing committee and principal;~~

10 d. ~~Woodrow Wilson Rehabilitation Center - center counselor upon recommendation of the~~
11 ~~staffing committee;~~

12 e. ~~State medical facilities - attending physicians;~~

13 f. ~~Juvenile detention homes - detention superintendent or designee.~~

14 (1) The attending physician - the Department for Mental Health, Mental Retardation and
15 Substance Abuse Services facilities;

16 (2) The central review committee, institute review committee or Department of Juvenile
17 Justice physician or psychologist for medical or psychological conditions, with a waiver
18 signed by the Department of Juvenile Justice security staff or designee for safety or
19 security conditions, - the Department of Correctional Education;

20 (3) The physician, staffing committee or principal - the Virginia School for the Deaf and
21 the Blind at Staunton and the Virginia School for the Deaf, the Blind, and the Multi-
22 Disabled at Hampton;

23 (4) The center counselor upon recommendation of the staffing committee - Woodrow
24 Wilson Rehabilitation Center;

Virginia Special Education Regulations

1 (5) The attending physician - state medical facilities;

2 (6) The detention superintendent or designee - juvenile detention homes.]

3 ~~12.~~ 11. ~~[Each state school for the deaf and the blind~~ The Virginia School for the Deaf and the
4 Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at
5 Hampton] shall provide [for each age group of children] a planned dormitory and a
6 student-life program ~~[for each age group of children]~~, including social and daily living skills,
7 recreation, and cultural activities.

8 ~~8 VAC 20-80-180.~~ C. Staff and facility.

9 ~~A.~~ 1. Each state board, agency or institution shall assign personnel to the educational
10 program as follows:

11 ~~1.~~ a. Administrative, supervisory, instructional, support and ancillary personnel holding
12 valid professional licenses, certificates and endorsements as appropriate in the area of
13 assignment (national standards may apply in the absence of state licensure or certification
14 requirements).

15 ~~2.~~ b. Additional education personnel to provide required related services as delineated in
16 the child's IEP.

17 ~~3. Teacher aids must~~ c. Trained and supervised paraprofessionals who shall [be high school
18 graduates have earned a high school diploma] or equivalent.

19 ~~B.~~ 2. Each state board, agency or institution shall staff the educational program as follows:

20 ~~1.~~ a. A principal, supervisor, education director[,] or lead teacher for the educational
21 program provided at each school or institution, except for juvenile detention homes;

22 ~~2.~~ b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the
23 following:

Virginia Special Education Regulations

- 1 ~~a. Serious~~ (1) Emotional disturbance - one teacher for every eight children or one teacher
2 and one ~~aide~~ paraprofessional for every 10 children;
- 3 ~~b.~~ (2) Hearing impairment/[~~deafness~~ deaf] - one teacher for every seven children with one
4 ~~aide~~ paraprofessional for every three classroom teachers; at the Virginia [Schools School
5 for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, the Blind and
6 the Multi-Disabled at Hampton] - one teacher for every eight children or one teacher and
7 one paraprofessional for every 10 children;
- 8 ~~c.~~ (3) Mental retardation - one teacher and one ~~aide~~ paraprofessional for every 10
9 children;
- 10 ~~d.~~ (4) Severe ~~and profound~~ disability - one teacher and one ~~aide~~ paraprofessional for
11 every six children or one teacher and two ~~aides~~ paraprofessionals for every 10 children;
- 12 ~~e.~~ (5) Visual impairment - one teacher for every seven children [~~with~~ and] one ~~aide~~
13 paraprofessional for every three classroom teachers;
- 14 ~~f.~~ (6) Other health impairment - one teacher for every eight children or one teacher and
15 one ~~aide~~ paraprofessional for every 10 children;
- 16 ~~g.~~ (7) Orthopedic impairment - one teacher for every eight children or one teacher and
17 one ~~aide~~ paraprofessional for every 10 children;
- 18 ~~h.~~ (8) Specific learning disability - one teacher for every eight children or one teacher and
19 one ~~aide~~ paraprofessional for every 10 children;
- 20 ~~i.~~ (9) Multiple disabilities/ or deaf-blindness - one teacher and one ~~aide~~ paraprofessional
21 for every six students or one teacher and two ~~aides~~ paraprofessionals for every 10
22 students;
- 23 ~~j.~~ (10) Autism - one teacher for every six students or one teacher and one ~~aide~~
24 paraprofessional for every eight students;

Virginia Special Education Regulations

1 [(11) Traumatic brain injury – students may be placed in any program, according to the
2 student’s IEP;]

3 ~~k. [(11) (12)]~~ Department of Correctional Education - no greater than an average of one
4 teacher and one ~~aide~~ paraprofessional for every 10 children;

5 ~~l. [(12) (13)]~~ Woodrow Wilson Rehabilitation Center - no greater than an average of one
6 teacher for every 10 children;

7 ~~m. [(13) (14)]~~ Juvenile detention homes - ~~a student/teacher ratio shall be based on the bed~~
8 ~~capacity of the detention home: one teacher per 12 beds [as funded by the Virginia~~
9 ~~Appropriation Act. where one teacher for every twelve beds, based on the bed capacity of~~
10 ~~the facility. If the number of students exceeds the bed capacity then the ratio shall be one~~
11 ~~teacher for every twelve students based on the average daily attendance from the previous~~
12 ~~school year. If]~~ unusual or extenuating circumstances exist, the agency may apply to the
13 Superintendent of Public Instruction for an exception to the ratio requirements. Such
14 requests shall be supported by sufficient justification.

15 ~~C. 3.~~ Each facility shall have available adequate and appropriate classroom space, ~~[within the~~
16 ~~available resources of the agency housing the education program. Each education program~~
17 ~~shall have access to]~~ a library, and instructional materials and supplies to meet the
18 educational needs of the children.

PART VI.

COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.

21 ~~8 VAC 20-80-190. Public elementary or secondary programs~~ Compliance with § 504 of the
22 Rehabilitation Act of 1973, as amended.

23 ~~A. [For those public elementary or secondary education programs operated by the Virginia~~
24 ~~Department of Education, the department~~ Each state-operated program providing educational

Virginia Special Education Regulations

1 services to persons of school age, the Virginia School for the Deaf and the Blind at Staunton, and
2 the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton] shall:

3 1. ~~[Develop] an individualized education program [a plan for each qualified] person who~~ is
4 ~~handicapped [has a disability as defined by the Rehabilitation Act of 1973 and its~~
5 ~~amendments (29 USC §§ 701 et seq.); and Provide a free appropriate public education to~~
6 ~~each qualified person with a disability of school age and provide procedural safeguards in~~
7 ~~accordance with the Virginia Department of Education's 504 plan.]~~

8 ~~[2. Utilize the system of procedural safeguards specified in this chapter to resolve disputes~~
9 ~~regarding the identification, evaluation or educational placement of persons who] are~~
10 ~~handicapped [have a disability as defined by the Rehabilitation Act of 1973 and its~~
11 ~~amendments (29 USC §§ 701 et seq.).]~~

12 ~~8 VAC 20-80-200. Local education agencies.~~

13 B. Local education educational agencies~~[, as defined by this chapter,] other than the Virginia~~
14 ~~Department of Education,~~ may utilize the due process hearing system specified in ~~this chapter~~
15 8 VAC 20-80-76 to resolve disputes regarding the identification, evaluation~~[,]~~ or educational
16 placement of [qualified] persons ~~who are handicapped have a disability [as defined by the~~
17 ~~Rehabilitation Act of 1973 and its amendments (29 USC §§ 701 et seq.).]~~

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Virginia Special Education Regulations

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Appendix A.

Figure 1. [~~Caseload~~ Local school division caseload] maximums as funded by the Virginia Appropriation Act.

<u>Caseload Maximums</u>			
<u>Disability Category</u>	<u>Level II</u>		<u>Level I</u>
	<u>With Paraprofessional 100% of the time</u>	<u>Without Paraprofessional 100% of the time</u>	
<u>Autism</u>	<u>8</u>	<u>6</u>	<u>24</u>
[Deaf-blind <u>Deaf-blindness]</u>	<u>8</u>	<u>6</u>	
<u>Developmental Delay: age 5 – 9</u> <u>8</u>	<u>10</u>	<u>8</u>	
<u>Developmental Delay: age 2 – 5</u>	<u>8 Center Based</u> <u>10 Combined</u>	<u>12 Home Based and/or Itinerant</u>	
<u>Emotional Disturbance</u>	<u>10</u>	<u>8</u>	<u>24</u>
<u>Hearing Impairment/Deaf</u>	<u>10</u>	<u>8</u>	<u>24</u>
<u>Learning Disability</u>	<u>10</u>	<u>8</u>	<u>24</u>
<u>Mental Retardation</u>	<u>10</u>	<u>8</u>	<u>24</u>
<u>Multiple Disabilities</u>	<u>8</u>	<u>6</u>	
<u>Orthopedic Impairment</u>	<u>10</u>	<u>8</u>	<u>24</u>
<u>Other Health Impairment</u>	<u>10</u>	<u>8</u>	<u>24</u>
<u>Severe Disabilities</u>	<u>8</u>	<u>6</u>	
<u>Speech or Language Impairment</u>			70 <u>68</u> <u>(itinerant)</u>

Virginia Special Education Regulations

<u>Traumatic Brain Injury</u>	<u>May be placed in any program, according to the IEP.</u>
<u>[Visual Impairment]</u>	<u>[Determined on a local or regional basis, jointly with the Virginia Department of Visually Handicapped.]</u>
<u>[Combined group of students needing Level I services with students needing Level II services.</u>	<u>20 Points (see Figure 2)]</u>

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Va. Code § 22.1-217; Va. Appropriation Act

Virginia Special Education Regulations

- 1 Figure 2. Values for students receiving Level I services when combined with students receiving
 2 Level II services.

<u>Disability Category</u>	<u>Level [I II] Values</u>		<u>Level [II I] Values</u>
	<u>With Paraprofessional 100% of the time</u>	<u>Without Paraprofessional 100% of the time</u>	
<u>Autism</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>[Deaf-Blind Deaf-blindness]</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Developmental Delay: age 5 – [9 8]</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>[Hearing Impairment/ Deaf Emotional Disturbance]</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>[Emotional Disturbance Hearing Impairment/Deaf]</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Learning Disability</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Mental Retardation</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Multiple Disabilities</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Orthopedic Impairment</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Other Health Impairment</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Severe Disabilities</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Traumatic Brain Injury</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>

Virginia Special Education Regulations

<u>[Visual Impairment]</u>	<u>[Determined on a local or regional basis, jointly with the Virginia Department of Visually Handicapped.]</u>		

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Virginia Special Education Regulations

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