

GUIDANCE FOR
MILITARY FAMILIES
WITH STUDENTS
IN SPECIAL EDUCATION

FEBRUARY 2020

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As of September 2018, the Defense Manpower Data Center (DMDC) estimated that there were 70,213 school-aged military-associated children of active duty members in Virginia.¹ Frequent relocations—often occurring in the summer and winter months—are typical for military personnel. When the family has school-aged children, relocation includes transfers to a new school division. For military families with students receiving special education and related services, relocation may bring additional challenges in ensuring smooth transitions in enrollment in a new school division.

As the U.S. Department of Education (USED), Office of Special Education and Rehabilitative Services (OSERS) has acknowledged, “[e]nsuring a high-quality education for highly mobile children is a critical responsibility for all of us. Highly mobile children include children experiencing frequent family moves into new school districts, such as military-connected children, migrant children, children in the foster care system, and children who are homeless. While these children often possess remarkable resilience, they also experience formidable challenges as they cope with frequent educational transitions.”²

This resource document is designed to assist military families with students in special

education as well as the school divisions that serve them. Since 2009, Virginia has participated in the Interstate

Compact on Educational Opportunity for Military Children (Interstate Compact). All 50 states and the District of Columbia participate in the Interstate Compact, which addresses, among other things, educational records and



enrollment; graduation; transfer of assessment scores; and special education. The stated purpose of the Interstate Compact is “to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents....”

While this guidance document is designed to address the particular needs of military families with students in special education, we note that other families with students in special education who are transferring to other school divisions may find some of the information included here helpful as well. We will address some of the concerns by topic through the following questions and answers.

Our state constitution directs the Virginia Board of Education to divide the Commonwealth into “school divisions” by geographical area and school-age population for the delivery of public education. Other states typically refer to these entities as “school districts.” Responsibility for the supervision of public schools in Virginia is vested in the local school board.

¹ Va. Const., Art. VIII, §§ 5; 7; Va. Code §§ 22.1-25; 22.1-28

¹ Virginia Department of Education, Student and Family Services, Military Families http://www.doe.virginia.gov/support/student_family/military/index.shtml.

² U.S. Department of Education, Office of Special Education and Rehabilitative Services, Guidance regarding high-quality education for highly mobile children (July 19, 2103) <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf> [hereafter, “Highly mobile”].



ENROLLMENT

The Interstate Compact addresses the priorities of facilitating the timely enrollment of children of military families. This Compact insures that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements” as well as “the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities” for military-connected children.

Q1: I HEARD THAT VIRGINIA HAS SPECIFIC LAWS OUTSIDE OF THE INTERSTATE COMPACT THAT SUPPORT MILITARY FAMILIES ONCE THEY RECEIVE ORDERS TO A MILITARY INSTALLATION IN VIRGINIA. IS THIS TRUE?

The short answer is yes. The Code of Virginia³ addresses how schools are to support military families relocating to Virginia. Under this provision, students of active duty personnel who are residing in temporary housing may enroll in the school division of family’s intended permanent residence. Military families are given 120 days to secure the required residency documentation indicating they reside at a permanent residence within the school division. Receiving school divisions may register these students remotely or in person for courses, other academic programs, school lotteries, and college

laboratory schools at the same time and in the same manner as all students who reside in the local school division. The assignment of the school such child will attend shall be determined by the local school division. In most cases, this school is determined by the location of the permanent residence which may be assigned schools in a particular zone.

The Code of Virginia³ requires school divisions, where a military installation or other military housing is located, to establish and implement “open enrollment policies for military-connected students residing on a military installation or in military housing. Certain conditions may be required of families before approval of intra-division transfer requests. Examples of this types of conditions may include: grade level or facility capacity, evidence of student need, family hardship and other division specific conditions. Families who reside in military housing should consult with their local school division to learn more about the “open enrollment” polices for military-connected student.

Although the 2006 federal implementing regulations for the Individuals with Disabilities Education Improvement Act (IDEA 2004) establish different procedures for students who transfer from out-of-state and those who transfer between Virginia school divisions, the Virginia Regulations make no such distinction. All transfer students—whether inter- or intrastate—are treated the same in Virginia.

34 C.F.R. §300.323(e); (f); 8 VAC 20-81-120.

³ Virginia Code §§ 22.1-3.1; 22.1-3.2; 22. 1-260.B; 22.1-271.2. More information regarding this process may be found on VDOE’s Web site at http://www.doe.virginia.gov/students_parents/student_enrollment.shtml.

⁴ Interstate Compact on Educational Opportunity for Military Children, Article VI, Section A2, “Special Power of Attorney” [the “Interstate Compact”]; Virginia Code §§ 22.1-360; 22.1-3.1; 22.1-3.2.

Q2: WHAT DOCUMENTATION MUST I PROVIDE TO THE NEW SCHOOL DIVISION FOR ENROLLMENT PURPOSES AND TO ENSURE RECEIPT OF MY CHILD’S SPECIAL EDUCATION SERVICES?

The Code of Virginia⁵ specifies the documentation required for enrollment of any child—including students from military families—in a Virginia school division. This documentation includes the student’s birth certificate, street address, social security number, certain health and immunization information, and a statement that the student is not subject to an expulsion in another school division. Certain additional information must be provided for students who are homeless or who are in foster care.

In addition to this required documentation, for military families with students in special education who are not living with a parent, a special power of attorney addressing the guardianship of a child of a military family is sufficient for “purposes of enrollment and all other actions requiring parental consent.” There is no requirement that the family provide copies of “deployment orders.”⁴

Effective practice: Some Virginia school divisions have adopted the practice of having students in special education enroll in the new school division at the central office. These administrative practices may necessarily vary based upon school division size, geography, and population clusters, but have proven helpful in

⁵ 34 C.F.R. § 300.323(g); 8 VAC 20-81-120.A.1. Information regarding this process is included in the Parent’s Guide to Special Education on VDOE’s Web site at http://www.doe.virginia.gov/special_ed/parents/parents_guide.pdf.

⁶ U.S. Department of Education, Office of Special Education Programs, Analysis of Comments and Changes, at 46638-46639, Federal Register, Vol. 71, No. 156 (August 14, 2006).

⁷ See Highly mobile, supra note 2.

⁸ Virginia Code § 22.1-360; Interstate Compact, Article IV, Section B, “Educational Records and Enrollment.”

⁹ 8 VAC 20-81-120.A.1.a.

ensuring smooth transitions for transfer students receiving special education.

SPECIAL EDUCATION SERVICES PARENTAL CONSENT IN VIRGINIA

Q3: ARE PARENTAL CONSENT PROVISIONS DIFFERENT IN VIRGINIA?

Virginia is one of only a few remaining states in which parental consent is required before (i) an initial eligibility determination or any change in your child’s eligibility identification; (ii) any revision to your child’s IEP; (iii) any partial or complete termination of special education and related services (except for graduation with a standard or advanced studies diploma); and (iv) the provision of a free appropriate public education to transfer students.



Q4: HOW WILL THE NEW SCHOOL DIVISION KNOW WHAT SERVICES MY CHILD HAS HAD IN THE PAST?

Generally, school divisions will ask upon enrollment whether your child has been receiving special education and related services. You may wish to provide the school division with a copy of items such as your child's most recent individualized education program (IEP) and evaluations, but you are not required to do so, and the school division may prefer to receive the "official" student record. The new school division must take "reasonable steps" to obtain your child's education records from the previous school. Similarly, the previous school division must also respond reasonably to the new school

division's request for your child's records. If the new school division is unable to obtain your child's IEP from the previous school or from you, the new school division is not required to provide special education and related services for your child, but must place your child in a general education program.⁵

The Office of Special Education Programs (OSEP) within USED has stated that it would be "over-regulating" to specify a particular timeline for school divisions to request and obtain a transfer student's records from the previous school division, or to require the new school division to document its attempts to obtain these records.⁶ However, USED has also stated that "[i]t is important for school administrators and teachers, including special education administrators and special education teachers, to have accurate and timely information to meeting their responsibilities to make a free appropriate public education (FAPE) available to highly mobile children with disabilities under IDEA, including affording all of IDEA's rights and protections to eligible children and their parents when the children change school districts."⁷

The new school division must take steps to adopt or develop a new IEP for your child within a reasonable period of time to avoid undue interruption in your child's special education services.

¹⁰ "Education record" also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3); Virginia Code § 22.1-289).

¹¹ 8 VAC 20-81-160.J.

¹² U.S. Department of Education, Office of Special Education Programs, Analysis of Comments and Changes, at 46629, Federal Register, Vol. 71, No. 156 (August 14, 2006).

¹³ U.S. Department of Education, Office of Special Education Programs, Analysis of Comments and Changes, at 46638-46639, Federal Register, Vol. 71, No. 156 (August 14, 2006).

The new school division may not require your child to stay home without receiving special education services until the adoption of a new IEP for your child.

OSEP, Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations (Question A-4), 111 LRP 63322, (revised September 2011).

See footnote 17 on page 7 for active hyperlink.



In addressing transfers of student records generally, the Interstate Compact provides that, "[s]imultaneous with the enrollment and conditional placement" of the transfer student—not only those students with IEPs—the new school division is to request the student's education records from the previous school division. The previous school division is to "process and furnish" the student's records within 10 days, or "within such time as is reasonably determined" by the Interstate Commission.⁸

In any case, if the previous school division is not responsive in providing your child's records, the new school division should contact VDOE for assistance in resolving the matter.⁹

Q5: WHAT "RECORDS" WILL TRANSFER TO THE NEW SCHOOL DIVISION? WILL THE RECORDS INCLUDE DOCUMENTATION OF DISCIPLINARY ACTIONS IMPOSED UPON MY CHILD IN THE PREVIOUS SCHOOL DIVISION?

The Virginia Regulations define "education records" as those records that are "directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution." The term also has the same meaning as "scholastic record." Your child's education record includes, in addition to written records, electronic exchanges between school personnel and parent(s) regarding matters

associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the federal Family Education Rights and Privacy Act.¹⁰

Virginia school divisions must include in the education records of a child with a disability a statement of any current or previous disciplinary actions taken against the child. When a Virginia student transfers from one school to another, the transmission of any of the student's records must include the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.¹¹ In addition, your child's education record would include any existing functional behavioral assessment (FBA) or behavior intervention plan (BIP) that your child may have.¹²

Federal regulations defer to the states to determine whether their school divisions must include disciplinary statements in student records and transmit these statements with student records when a child transfers from one school to another. In any case, the individual state's policy on transmitting disciplinary information must apply to both students with disabilities and students without disabilities. Thus, it is possible this information may not be included in the education record of all out-of-state students (with or without disabilities) transferring to a Virginia school division.¹³

¹⁴ Additional information regarding this issue can be found in VDOE's FAQ 022-12 (Enrollment as a Pre-Requisite to an IEP Meeting), available on our Web site at http://www.doe.virginia.gov/special_ed/regulations/state/faq_implementing_regulations/2012/022-12_enrollment_iep_mtg.shtml.

¹⁵ 8 VAC 20-81-120.C; 8 VAC 20-81-70.H; 8 VAC 20-81-110.B.2.c. Additional information regarding the reevaluation and eligibility processes can be found in VDOE's Parent's Guide to Special Education, available online at http://www.doe.virginia.gov/special_ed/parents/parents_guide.pdf.

¹⁶ 8 VAC 20-81-110.B.1; 8 VAC 20-81-110.B.2.

¹⁷ U.S. Department of Education, Office of Special Education Programs, Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations (Question A-4), 111 LRP 63322, (revised September 2011) <<http://idea.ed.gov/explore/view/p/,root,dynamic,QaCorner,3,>>.



Q6: WE HAVE MOVED TO A NEW LOCALITY AND HAVE NOT YET ENROLLED OUR CHILD IN PUBLIC SCHOOL. WE ARE CONSIDERING ENROLLING OUR CHILD IN A PRIVATE SCHOOL. MAY WE STILL REQUEST THAT THE NEW SCHOOL DIVISION DEVELOP AN IEP FOR OUR CHILD?

The new school division has an ongoing, affirmative obligation to identify students with disabilities residing in the division, and to provide FAPE. Thus, as a general rule, enrolling your child in the new school division is not a prerequisite for developing an IEP for your child upon your request.¹⁴

Q7: WHAT SERVICES WILL MY CHILD RECEIVE IN THE NEW SCHOOL DIVISION? HOW LONG WILL IT TAKE FOR MY CHILD TO RECEIVE SPECIAL EDUCATION AND RELATED SERVICES?

When your child transfers to a new school division in Virginia, the new school division must consult with you to ensure that your child receives services that are “comparable” to those your child received in the previous school

¹⁸ 8 VAC 20-81-120.A.2.

¹⁹ U.S. Department of Education, Office of Special Education Programs, Letter to Finch, 56 IDELR 174; 111 LRP 13111 (August 5, 2010). Additional information regarding “comparable services” is included in VDOE’s FAQ 007-10 (Students Who Transfer), available on our Web site at http://www.doe.virginia.gov/special_ed/regulations/state/faq_implementing_regulations/2010/007_students_transfer.shtml.

division, until the new school division either (i) with your consent, adopts and implements your child’s IEP from the previous school division; or (ii) with your consent, conducts an evaluation and develops and implements a new IEP for your child. As noted in VDOE’s *Parent’s Guide to Special Education*, the new school division may, with your consent, provide interim services while obtaining and reviewing information necessary to develop a new IEP for your child.

If you and the new division agree to new evaluations, your child will receive those services set forth in your child’s most recent IEP (excluding sections of the IEP that are inconsistent with the law) while the evaluations are being completed. Special education regulations set a 65-business-day timeline for the completion of evaluations and determinations of eligibility for special education. Once the evaluation is complete and eligibility is determined, an IEP must be developed for your child no later than 30 calendar days after the date eligibility was determined.¹⁵

Virginia special education regulations require school divisions to have an IEP “in effect” for your child at the beginning of the school year. In addition, an IEP must be in effect before your child receives services, and must be implemented as soon as possible after you sign the IEP.¹⁶

Special education regulations do not establish timelines for the new school division to adopt your child’s IEP from the previous school division or to develop and implement a new IEP. The school division may want to take some time to



get to know your child before proposing its own IEP. However, the new school division should take these steps within a reasonable time to avoid interruption in the provision of special education and related services.¹⁷

If you disagree with your child’s identification, evaluation, or educational placement or the provision of FAPE, there are three procedures that parents commonly use: mediation, due process hearing, and complaint. You can find more information on each of these in the VDOE’s **Parent’s Guide to Special Education**.

Q8: WHAT ARE “COMPARABLE” SERVICES?

The definition of those “comparable services” required to be provided to transfer students who have IEPs may sometimes prove challenging to families and school divisions.¹⁸ OSEP has specifically declined to define this term in the 2006 implementing regulations

²⁰ USED has stated that, while the determination of “comparable” ESY services is an individualized one, the new school division “may not arbitrarily decrease the level of services to be provided to the child as comparable services.” See *Highly mobile*, supra note 2. Additional information regarding ESY services can be found in VDOE’s FAQ 032-12 (IEP: Transfer Student and Extended School Year Services), available on our Web site at http://www.doe.virginia.gov/special_ed/regulations/state/faq_implementing_regulations/2012/032-12_iep_transfer_student_and_esy_services.shtml.





FOR STUDENTS ENTERING THE NINTH GRADE FOR THE FIRST TIME IN 2013-2014, THE MODIFIED STANDARD DIPLOMA WILL NO LONGER BE A DIPLOMA OPTION. THE BOARD OF EDUCATION HAS ADOPTED REGULATIONS PROVIDING FOR CREDIT ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES WHO PURSUE A STANDARD DIPLOMA. THE IEP TEAM WILL DETERMINE WHETHER YOUR CHILD REQUIRES CREDIT ACCOMMODATIONS. INFORMATION REGARDING THE CREDIT ACCOMMODATIONS MAY BE FOUND ON VDOE'S WEB SITE AT [HTTP://WWW.DOE.VIRGINIA.GOV/INSTRUCTION/GRADUATION/CREDIT_ACCOMMODATIONS/GUIDELINES_STANDARD_DIPLOMA_CREDIT_ACCOMMODATIONS_FOR_STUDENTS_WITH_DISABILITIES_FAQ.PDF](http://www.doe.virginia.gov/instruction/graduation/credit_accommodations/guidelines_standard_diploma_credit_accommodations_for_students_with_disabilities_fa.pdf).

of the *Individuals with Disabilities Education Improvement Act of 2004 (IDEA)*, and "interprets 'comparable' to have the plain meaning of the word, which is 'similar' or 'equivalent.'"

However, OSEP has clarified that, when used in the context of the student who has transferred from one school division to another, "comparable" services are those services that are "similar" or "equivalent" to those set forth in the student's previous IEP, as determined by the student's newly-designated IEP Team in the new school division. **Remember, as the parent, you are a vital member of the IEP team.**

OSEP has also advised that, when a student with an IEP transfers from one school division to another within the same school year, any "temporary goals" adopted in an interim IEP should be "aligned" with the student's annual goals for services as reflected in the student's

IEP from the previous school division, until the new IEP team either adopts or implements the child's previous IEP, or develops, adopts, and implements a new IEP.¹⁹

Q9: MY CHILD'S NEW IEP TEAM IS MEETING TO DISCUSS "COMPARABLE SERVICES" FOR MY CHILD. WHAT IF THE NEW SCHOOL DIVISION DOES NOT HAVE THE FUNDS TO PROVIDE THE SAME SERVICES MY CHILD PREVIOUSLY RECEIVED?

¹⁹ 8 VAC 20-81-60.B.1.g(2); 34 C.F.R. § 300.301(d)(2); (e).

²² U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46639, *Federal Register*, Vol. 71, No. 156 (August 14, 2006).

²³ 34 C.F.R. § 300.304(c)(5); 8 VAC 20-81-70.E.

²⁴ See *Highly mobile*, supra note 2.

The IEP team—of which you, as the parent, are a member—determines what services are necessary to provide FAPE for your child. Although the services proposed by the new school division may, in fact, differ somewhat from what your child received in the previous school division, the determination of FAPE—or comparable services—cannot be based upon the availability of financial resources. Parents and school divisions are reminded, however, that FAPE is an individualized determination based on the child's unique needs, and that a student's eligibility for special education within a particular disability category does not guarantee or "predetermine" a specific menu of services.

Q10: MY CHILD'S PREVIOUS IEP PROVIDED FOR EXTENDED SCHOOL YEAR SERVICES (ESY) IN THE SUMMER MONTHS. HOW WILL OUR TRANSFER TO A NEW SCHOOL DIVISION AFFECT THIS?

When a child whose IEP provides for ESY services to be delivered over the summer transfers to a new school division in the summer months, before the commencement of a new school year, the new division must provide comparable ESY services, in consultation with you, until the new IEP team either (i) adopts your child's previous IEP; (ii) develops an interim IEP; or (iii) develops a new IEP.²⁰

Q11: AN INITIAL EVALUATION TO DETERMINE OUR CHILD'S ELIGIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES WAS UNDERWAY WHEN WE MOVED TO A NEW SCHOOL DIVISION. WHAT TIMELINES APPLY TO THE COMPLETION OF THE EVALUATION AND ELIGIBILITY PROCESS, AND WHICH SCHOOL DIVISION IS RESPONSIBLE?

Virginia's special education regulations provide that evaluations and determinations of eligibility for special education services must be completed within 65 business days of the receipt of the referral by the special education administrator or designee, subject to certain exceptions.

One exception addresses the completion of initial evaluations when a student transfers to another school division after the 65-business-day timeline has commenced, and an eligibility determination has yet to be made. In this case, the timeline does not apply if the new school division is making sufficient progress to ensure prompt completion of the evaluation, and you and the new school division agree to a specific time when the evaluation will be completed.²¹

Because the completion of evaluation for students who transfer from one school division to another is "subject to multiple factors—such as differences in assessment instruments used by the previous and current school divisions—OSEP has specifically declined to "regulate on a timeline that would apply in all circumstances."²² However, federal and state special education regulations direct the new school division to ensure that assessments of students with disabilities who transfer from one school division to another are "coordinated" with the previous and new schools "as necessary and as expeditiously as possible" to ensure prompt completion of evaluations.²³

In its July 2013 guidance document, USED noted the use of a "multitiered instructional framework, often referred to as RTI [response to intervention], as a schoolwide approach to address the needs of students, including struggling learners and students with disabilities."

²⁵ Additional information regarding this issue can be found in VDOE's FAQ 010-10 (IEEs for Students Who Transfer), available on our Web site at http://www.doe.virginia.gov/special_ed/regulations/state/faq_implementing_regulations/2010/010_iee_transfer.shtml.

²⁶ 34 C.F.R. § 300.172; 8 VAC 20-81-230.J; U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46617, *Federal Register*, Vol. 71, No. 156 (August 14, 2006).

²⁷ Information regarding Virginia graduation requirements generally may be found on VDOE's Web site at <http://www.doe.virginia.gov/instruction/graduation/faq.shtml>.

²⁸ See Article VII, Interstate Compact. "In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student..."

If you provided consent for an initial evaluation for your child before transferring to a new school division in Virginia, the new school division may not postpone the evaluation to implement an RTI process. Your new school division may, however, provide interventions while the initial evaluation is being completed.²⁴



IN VIRGINIA, WHEN AN IEP TEAM IS UNABLE TO AGREE TO A NEW IEP FOR YOUR CHILD, THE LAST-AGREED-UPON IEP WILL CONTINUE TO GOVERN YOUR CHILD'S SPECIAL EDUCATION AND RELATED SERVICES. THE SCHOOL DIVISION MAY NOT CHANGE YOUR CHILD'S IEP OR ELIGIBILITY STATUS, OR TERMINATE SPECIAL EDUCATION SERVICES WITHOUT YOUR CONSENT. YOU ARE ENTITLED TO PRIOR WRITTEN NOTICE WHEN THE SCHOOL DIVISION PROPOSES THESE ACTIONS AND BEFORE YOU PROVIDE CONSENT.

8 VAC 20-81-170.C; E.

Q12: OUR CHILD WAS EVALUATED AND FOUND INELIGIBLE FOR SPECIAL EDUCATION SERVICES BEFORE WE TRANSFERRED TO A NEW SCHOOL DIVISION. WE ARE REQUESTING AN INDEPENDENT EDUCATIONAL EVALUATION (IEE) FOR OUR CHILD. WHICH SCHOOL DIVISION IS RESPONSIBLE FOR THIS IEE?

In this instance, while the previous school division found your child ineligible for special education, the new school division is responsible for identifying and serving students with disabilities who reside in its jurisdiction. The new school division must either adopt the previous division's evaluation, or conduct its own. Accordingly, the new school division must respond to your request for an IEE, or initiate a

²⁹ Guidance and resource materials are available online at <http://www.dodea.edu/Curriculum/specialEduc/index.cfm>. The DoDEA has stated that "[f]or students with disabilities [graduation from a DoDEA high school] constitutes a release from all services specified on the IEP and a change in placement requiring CSC [case study committee] action. Parents must be notified at or by the exit transition meeting that graduation with a high school diploma is a change in special education placement and an end to the entitlements of special education services [emphasis in the original].... Generally the parents must approve of the graduation or a hearing officer or a court of competent jurisdiction may order it. However, a student may be graduated...without parental consent...[if the]...student has satisfactorily completed the minimum academic credit requirements for graduation applicable to students without disabilities; or...[t]he student has completed graduation requirements specified in the IEP and services are no longer required. (In this case, the IEP shall state what requirements must be satisfactorily met to be eligible for graduation). Special education services through the school system end when the student is awarded a high school diploma." U.S. Department of Defense Education Activity, Special Education Procedural Guide (2005) <<http://www.dodea.edu/Curriculum/specialEduc/upload/SPEDproceduralGuide.pdf>>.

³⁰ U.S. Department of Education, Office for Civil Rights, South Pasadena (CA) Unified Sch. Dist., No. 09-08-1394, 109 LRP 31670 (OCR 03/17/09).

³¹ "We believe that these regulatory provisions are sufficient to ensure that the parent of a child who changes school districts receives the requisite notice in a timely manner. When the child with a disability transfers to a new school district, that school district would have an obligation to ensure that the child's parents are provided notice at least once in that school year and at the other times specified" in special education regulations. OSEP, Analysis of Comments and Changes, at 46692, Federal Register, Vol. 71, No. 156 (August 14, 2006).

³² Additional information regarding the procedural safeguards can be found in our Parent's Guide to Special Education (p. 38) on our Web site at http://www.doe.virginia.gov/special_ed/parents/parents_guide.pdf.

due process hearing to show that its evaluation (or adoption of the previous school division's evaluation) was appropriate. The new school division is also responsible for the IEE if the previous school division found your child eligible for special education. Had you requested the IEE before your transfer to the new school division, the previous school division would have been responsible for processing your IEE request.²⁵

Q13: OUR CHILD'S PREVIOUS IEP PROVIDED THAT HE WOULD RECEIVE CERTAIN INSTRUCTIONAL MATERIALS IN A SPECIALIZED FORMAT. WHEN CAN WE EXPECT HIM TO RECEIVE THESE MATERIALS IN THE NEW SCHOOL DIVISION?

States are to make "every effort to provide children with disabilities accessible instructional materials at the same time as other children receive their instructional materials." Thus, if your child requires instructional materials in a specialized format, (such as Braille, audio, or video text) the LEA is required to provide these materials in a timely manner.

OSEP has acknowledged that, in the case of some midyear transfer students, LEAs may not be able to make these specialized materials immediately available to your child. Thus, LEAs are granted some leeway in ensuring the provision of these materials, and must take "reasonable steps" to ensure provision of these materials to your child.²⁶

Q14: WE ARE IN THE PROCESS OF TRANSFERRING TO A VIRGINIA SCHOOL DIVISION, AND OUR CHILD IS A HIGH SCHOOL SENIOR. HOW WILL DIFFERENCES IN COURSE CREDITS AND DIPLOMA REQUIREMENTS BE ADDRESSED IN THE NEW SCHOOL DIVISION?

To "facilitate the on-time graduation of children of military families," the Interstate Compact directs school divisions to incorporate procedures regarding waivers of specific courses required for graduation if your child has successfully

completed similar coursework in the previous school division. The Interstate Compact also directs states to accept (i) "exit" or end-of-course exams required for graduation by the previous state; (ii) national norm-referenced achievement tests; or (iii) alternative testing acceptable to the receiving state, rather than requiring the transfer student to complete the testing required for graduation by the receiving state.²⁷

In the case of a military student transferring during his or her senior year who remains ineligible for graduation in the new school division after all the alternatives have been considered, the previous school division, in cooperation with the new school division, is to ensure the receipt of a diploma from the previous school division, if the student has met the graduation requirements of the previous school division.²⁸

If your child is transferring from a United States Department of Defense Education Activity (DoDEA) school, you may wish to contact the DoDEA Special Education Coordinator in Alexandria, Virginia, regarding graduation and diploma requirements in DoDEA schools.²⁹

SECTION 504

Q15: MY CHILD HAS A SECTION 504 PLAN, RATHER THAN AN IEP. WHAT HAPPENS TO MY CHILD'S SECTION 504 PLAN IF WE MOVE TO ANOTHER SCHOOL DIVISION?

The Office for Civil Rights (OCR) within USED has stated that, when a student with a Section 504 plan transfers to a new school division, the student must be provided with "appropriate services as quickly as possible." The new school division may conduct new evaluations for your child (with your consent), but cannot deny the provision of services set forth in the previous Section 504 plan during the evaluation period. The new school division may ultimately develop and implement a new Section 504 plan, but must implement the existing Section 504 plan in the meantime.³⁰

PROCEDURAL SAFEGUARDS

Q16: AM I ENTITLED TO A COPY OF THE PROCEDURAL SAFEGUARDS WHEN MY CHILD ENROLLS IN THE NEW SCHOOL DIVISION?

School divisions must provide all parents of students receiving special education with a copy of procedural safeguards only once a year. There is no regulatory requirement that the new school division provide this copy to you upon your child's enrollment, although best practice suggests that this may be helpful to parents, children, and the school division.³¹ The school division is also required to provide you with



a copy of the procedural safeguards (i) if you request an additional copy; (ii) an initial referral for—or your request for—an evaluation of your child; (iii) receipt of the first state complaint regarding your child during a school year; (iv) receipt of the first request for a due process hearing regarding your child during a school year; and (v) on the date upon which a decision is made to make a disciplinary removal that constitutes a change in placement for your child due to a violation of the local code of student conduct.³²

³³ Additional information, forms, and resources addressing special education generally are found on our Web site at http://www.doe.virginia.gov/special_ed/parents/index.shtml. Information regarding state special education dispute resolution options is available on our Web Site at http://www.doe.virginia.gov/special_ed/resolving_disputes/index.shtml.

³⁴ 8 VAC 20-81-110.C.1.f. Additional information regarding military liaison officers is available on VDOE's Web site at http://www.doe.virginia.gov/support/student_family/military/index.shtml.

DISPUTE RESOLUTION

Q17: WHAT IF I DON'T AGREE WITH THE NEW SCHOOL DIVISION'S PROPOSAL OF COMPARABLE SERVICES, OR A PROPOSED NEW IEP, OR THE NEW SCHOOL DIVISION FAILS TO FOLLOW SPECIAL EDUCATION REGULATIONS?

Military families who may anticipate transferring to another school division within a short time period may sometimes feel disinclined to pursue state special education dispute resolution options, such as the 60-day state complaint process (8 VAC 20-81-200) or due process hearings (8 VAC 20-81-210). In these cases, we note that the option of state-sponsored mediation (8 VAC 20-81-190) may prove especially helpful in resolving disputes. Mediation may often be arranged to occur within one to two weeks, potentially affording prompt resolution of a special education dispute.

We note that, even if a student with a disability transfers to another school division during (or following) a state complaint investigation or due process hearing, or after the student's IEP team has determined that student is entitled to compensatory services, the "original" school division remains responsible for the delivery of compensatory services in the new school division.

In any case, this office believes that meeting directly with the school division is vital, as this office strongly believes that special education concerns are better resolved at the local level, if at all possible. We encourage parents and school divisions to work collaboratively to reach an understanding of mutual concerns and agreements in the best interests of children with disabilities.³³

Q17: WHAT IS THE ROLE OF THE MILITARY LIAISON IN ASSISTING ME WITH COMMUNICATIONS REGARDING MY CHILD'S SPECIAL EDUCATION SERVICES?

Military families are learning more about the role of the military liaison, who serves not as an advocate, but as a resource and point of contact for military families. While these military liaisons may contact VDOE (and the Office of Dispute Resolution and Administrative Services [ODRAS]) or school divisions on behalf of military families, a written release authorization from the parent is necessary to obtain confidential information. Military liaison personnel may participate in an IEP meeting as a parent invitee.³⁵

Effective practice: School divisions may wish to work with their local school board attorneys to create a standard release authorization to assist parents generally in facilitating the exchange of information between a military liaison (or an advocate) and the school division.

RESOURCES

Virginia Interstate Compact on Educational Opportunity for Military Children (Va. Code § 22.1-360)
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-360>

Virginia Department of Education, Student and School Support, Military Families
http://www.doe.virginia.gov/support/student_family/military/index.shtml

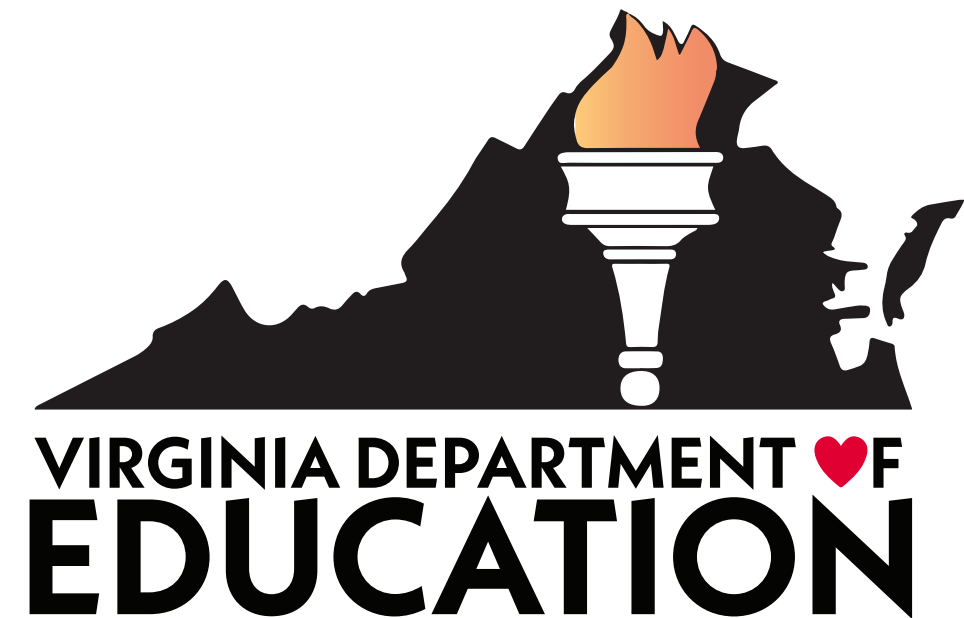
Virginia Department of Education, Division of Special Education and Student Services, *Regulations Governing Special Education Programs for Children with Disabilities* (2010)
http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf

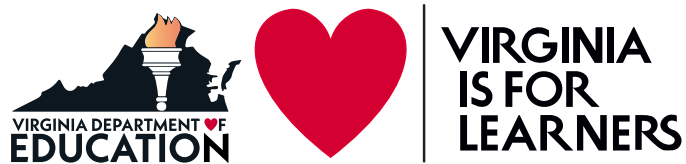
Virginia Department of Education, Division of Special Education and Student Services, *Parent's Guide to Special Education* (2010) http://www.doe.virginia.gov/special_ed/parents/parents_guide.pdf

Virginia Department of Education, Division of Special Education and Student Services, *Parents' Guide to Special Education Dispute Resolution* (2008)
http://www.doe.virginia.gov/special_ed/resolving_disputes/parents_guide_dispute_resolution.pdf

Virginia Department of Education, Enrollment in Virginia Public Schools
http://www.doe.virginia.gov/students_parents/student_enrollment.shtml

Department of Defense Education Activity, *Special Education Procedural Guide* (2005)
<http://www.dodea.edu/Curriculum/specialEduc/upload/SPEDproceduralGuide.pdf>





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