



VIRGINIA BOARD OF EDUCATION

AGENDA ITEM

Agenda Item: K

Date: March 28, 2024

Title: First and Final Review of Regulatory Changes to Align with 2024 Differentiated Monitoring and Support Report

Presenter: Jim Chapman, Director of Board Relations

Purpose of Presentation

Action required by state or federal law or regulation.

Executive Summary

As a result of an onsite federal monitoring visit by the U. S. Department of Education’s Office of Special Education Programs (“OSEP”), conducted in September 2023 with a Differentiated Monitoring and Support Report (“[DMS Report](#)”) being released to the Virginia Department of Education (“VDOE”) on March 13, 2024, the Virginia Department of Education (“VDOE”) is proposing revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* ([8VAC20-81](#)) to implement corrective actions as required by OSEP.

Action Requested

Final review. Action requested at this meeting.

Superintendent’s Recommendation

The Superintendent of Public Instruction recommends that the Board of Education waive first review, approve the exempt action as presented, and delegate to VDOE staff authority to make any additional changes necessary to comply with the DMS Report or the Administrative Process Act.

Rationale for Action

The regulatory change is the result of federal monitoring and is necessary to meet the requirements of federal law or regulations. The action is exempt from Article 2 of the Administrative Process Act under § [2.2-4006\(A\)\(4\)\(c\)](#) of the Code of Virginia.

Background Information and Statutory Authority

The proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* include the changes detailed below. On May 28, 2009, the Virginia Board of Education adopted revised regulations to reflect the *Individuals with Disabilities Education Act* (IDEA) and its 2006 implementing regulations. The Board's revised regulations became effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, at 8 VAC 20-81-10 *et seq.* (the "Virginia Regulations"). The [Virginia Regulations](#) are available online.

In the DMS Report, OSEP made the following findings:

- The state definitions of "complaint" and "due process hearing" in 8VAC20-81-10 are restricted to a violation by a local educational agency ("LEA") rather than a "public agency," which is inconsistent with 34 C.F.R. §§ 300.33, 300.153(b), and 300.507(b);
- The state definitions of "calendar day" and "business day" in 8VAC20-81-10 are inconsistent with 34 C.F.R. § 300.11(a) and (b);
- The procedure of requiring parties to sign a confidentiality pledge prior to the commencement of mediation, as permitted in 8VAC20-81-190(E)(3) is inconsistent with 34 C.F.R. § 300.506(b)(8) and OSEP guidance;
- 8VAC20-81-200(B)(3) requires that a state complaint "contain a statement that a local educational agency has violated the Act or these special education regulations," which is inconsistent with 34 C.F.R. §§ 300.33 and 300.153(b);
- 8VAC20-81-200(B)(7) requires that a complaint "contain all relevant information and supporting documentation," which is inconsistent with 34 C.F.R. § 300.153(b);
- 8VAC20-81-200(D)(1)(c) does not allow for a case-by-case determination as to whether non-personally identifiable information can be shared with a non-parent complainant, which is inconsistent with 34 C.F.R. § 300.152(a)(5);
- 8VAC20-81-210(A) applies only to LEAs or "school divisions" rather than all of the entities listed under the IDEA's "public agency" definition as required by 34 C.F.R. §§ 300.33 and 300.507;
- 8VAC20-81-210(P)(9)(b) permits the state educational agency ("SEA") to provide approval for an extension of the due process hearing timeline when neither party requests an extension of time, which is inconsistent with the requirements in 34 C.F.R. § 300.515(a) and (c).

In response to the findings in the DMS Report, VDOE staff recommends the following regulatory changes:

- Amending the definitions of “business day,” “calendar day,” and “complaint” in 8VAC20-81-10 to align with federal regulations and OSEP guidance;
- Adding a definition of “public agency” to 8VAC20-81-10 to address OSEP concerns about 8VAC20-81-200 and 8VAC20-81-210;
- Amending 8VAC20-81-190(A) to clarify that mediation is available “to parties to any dispute arising under the Act”;
- Striking the last sentence from 8VAC20-81-190(E)(3) to align with federal regulations and OSEP guidance;
- Amending 8VAC20-81-200(B)(3) so that complaints require a statement that a “public agency,” rather than only a LEA, has violated the Act or 8VAC20-81;
- Striking 8VAC20-81-200(B)(7) to align with federal regulations and OSEP guidance;
- Amending 8VAC20-81-200(D)(1)(c) to require VDOE to determine on a case-by-case basis what information must be withheld when resolving a complaint filed by someone other than the child’s parent and the parent has not consented to the release of the child’s personally identifiable information;
- Replacing the uses of “local educational agency” with “public agency” 8VAC20-81-200(C), (D), (F), and (G) to ensure consistency with federal regulations and OSEP guidance;
- Amending 8VAC20-81-210(A) so that the due process system is available to resolve disputes between parents and public agencies, rather than just LEAs;
- Striking 8VAC20-81-210(P)(9)(b) to align with federal regulations and OSEP guidance;
- Replacing the uses of “local educational agency” with “public agency” 8VAC20-81-210(E)(1), (E)(2), (N), and (O)(17)(c) to ensure consistency with federal regulations and OSEP guidance; and
- Replacing the use of “school division” with “local educational agency” in 8VAC20-81-210(N)(16)(a) for consistency

The full regulatory text, with changes highlighted, is included as Attachment 2 of this item.

Stakeholder Engagement

VDOE staff has consulted with the OAG to ensure the proposed regulatory text will properly effectuate the requirements of federal monitoring. The federal monitoring report also cites significant stakeholder interaction and feedback as a component of their findings.

Implementation and Communication

Once approved by this Board, VDOE staff will initiate the exempt regulatory process on Town Hall.

Impact on Fiscal and Human Resources

This action will not impact VDOE resources. The department will communicate these regulatory updates via memorandum to school divisions, special education directors and special education stakeholders.