



**#059-22**

**Commonwealth of Virginia  
Virginia Department of Education  
Superintendent's Memo #059-22**

**DATE:** March 11, 2022  
**TO:** Division Superintendents  
**FROM:** Jillian Balow, Superintendent of Public Instruction  
**SUBJECT:** **Additional Required Actions from the Differentiated Monitoring and Support Letter from the U.S. Department of Education's Office of Special Education Programs**

The Virginia Department of Education's (VDOE) Department of Special Education and Student Services is responsible for general supervision and monitoring the implementation of the *Individuals with Disabilities Education Act (IDEA)* in accordance with the provisions at 34 CFR 300.604(a)(1), and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2) and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-80. Consistent with these requirements, VDOE has revised its monitoring and general supervision of special education to implement required actions from the Differentiated Monitoring and Support Report from the U.S. Department of Education's Office of Special Education Programs conducted in May, 2019.

### **General Supervision**

The VDOE has ensured that the system for general supervision of local school divisions and other educational facilities is reasonably designed to ensure timely local educational agency (LEA) compliance with IDEA requirements as well as improving educational results and outcomes for all children with disabilities. This is accomplished by the following specific

revisions the VDOE has made to its policies, practices, and procedures for general supervision and monitoring:

**Comprehensive review:** A comprehensive review is cyclical and involves multiple activities to ensure that all educational facilities that operate as local educational agencies are monitored every five years, at a minimum. Monitoring activities encompass IDEA compliance as well as improving educational results and outcomes for all children with disabilities. In Virginia, a comprehensive review is accomplished via a five-year cyclical review process. Approximately 20 percent of the state's 132 school divisions and other educational facilities will receive comprehensive reviews annually.

**Targeted review:** A targeted review is narrower in scope and more focused by nature. When concerns or complaints are brought to VDOE's attention by internal or external sources regarding an LEA's or other educational facility's implementation of IDEA, a targeted review may be conducted. Therefore, the number of targeted reviews will vary annually. The purpose of a targeted review is not only to determine compliance with federal and state laws, but to offer technical assistance and resources to prevent repeated noncompliance.

## State Complaint Procedures

The VDOE has also recently revised its [Complaint Resolution Procedures](#) that establish procedures and practices for receiving and resolving every complaint which alleges a violation of Federal and State laws and regulations pertaining to the education of children with disabilities, in accordance with the *Individuals with Disabilities Education Improvement Act* (2004) and its implementing regulations (34 C.F.R. §300.151, et seq.); the *Code of Virginia* (§ 22.1-214, E.); and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, effective July 7, 2009, and reissued on January 25, 2010, and on July 29, 2015, (8VAC20-81-200) (the Virginia Regulations).

## Due Process Complaint and Hearing Procedures

The VDOE has revised its Policies and Procedures for Due Special Education Process Hearings as well as the document titled *Managing the Timelines in Due Process Hearings: A Guidance Document for Special Education Hearing Officers* and related documents intended for hearing officer use to ensure consistent and accurate tracking of expedited and non-expedited due

process hearings, including the resolution period and whether a resolution meeting has timely occurred. This process also serves as a record for the VDOE to ensure compliance with meeting required timelines related to due process, including tracking the timeliness of the resolution process and fully adjudicated due process hearing decisions to be consistent with the required actions.

## Mediation

The VDOE has implemented revised procedures and practices that prohibit the attendance of any employee of VDOE at a mediation session in accordance with the document titled [Administration of the Virginia Special Education Mediation System](#). Additional information regarding Mediation is available on the [VDOE Special Education Mediation webpage](#).

## Independent Educational Evaluations

On December 17, 2021, the VDOE posted and published [Superintendent's Memo #330-21](#) detailing the Board of Education's amendment of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (Virginia Regulations) addressing the right of a parent to an independent educational evaluation at public expense, to remove the word "component" following the word "evaluation." The change is intended to ensure consistency of the Virginia Regulations with federal guidance. In compliance with OSEP's requests, the VDOE is requiring all LEAs to conduct a review of their policies, procedures, and practices to ensure that they are consistent with a parent's right to obtain an IEE at public expense as noted in the following provisions. The VDOE has been directed by OSEP to clarify the following provisions of IEE. Specifically:

The parent has a right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. 8 VAC 20-81-170.B.2(a). Please note this regulation was revised to remove the word "component."

Per OSEP's Differentiated Monitoring and Support Report issued on June 23, 2020, the parent's right to an IEE at public expense cannot be restricted to those assessments that were part of the public agency's evaluation. OSEP has provided the following citation as guidance *20 U.S.C. 1415(b)(1) and 34 C.F.R. § 300.502(b)*.

If a parent requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either: initiate a due process hearing to show its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the local agency's criteria. 8 VAC 20-81-170.B.2.

The Virginia Department of Education requests that this information be shared with members of your education community, local board of education, and local special education advisory committee.

### For more information

For additional information, please contact the Department of Special Education and Student Services, at [special.ed.assistantsuperintendent.memo@doe.virginia.gov](mailto:special.ed.assistantsuperintendent.memo@doe.virginia.gov); telephone (804) 786-8079.

JB/SMH