

**GUIDANCE DOCUMENT
FOR
DEVELOPING LOCAL POLICIES AND PROCEDURES
REQUIRED FOR IMPLEMENTATION
OF SPECIAL EDUCATION REGULATIONS IN
VIRGINIA'S PUBLIC SCHOOLS**



**DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES
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TABLE OF CONTENTS

	PAGE
INTRODUCTION	
REQUIRED LOCAL POLICY	1
REQUIRED LOCAL PROCEDURES	2
8 VAC 20-81-50	
CHILD FIND	2
SCREENING	4
REFERRAL	6
8 VAC 20-81-60	
REFERRAL FOR INITIAL EVALUATION FOR SPECIAL EDUCATION	8
8 VAC 20-81-70	
EVALUATION AND REEVALUATION	11
8 VAC 20-81-80	
ELIGIBILITY DETERMINATION	19
8 VAC 20-81-220	
ASSIGNMENT OF SURROGATE PARENTS	24
REQUIRED LOCAL POLICY OR PROCEDURE	26

INTRODUCTION

To receive federal funds available under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), local school boards must adopt and implement special education policies and procedures consistent with federal and state regulations to ensure a free appropriate public education (FAPE) to all students who are eligible for special education. The purpose of this document is to provide information about the specific policy and procedure requirements to be in compliance with federal and state implementing regulations of IDEA.

This document does not address the additional operational procedures that a locality may wish to develop which are not required to be approved by the Virginia Department of Education, and generally, are not required to be reviewed and/or approved by local school boards. This document is designed to ensure clarity of the regulatory requirements for local policies and procedures under the IDEA.

This document has been reviewed and approved by the Office of the Attorney General. Local school boards are always advised to consult with their attorney for legal advice related to the provisions in this Guidance Document.

Questions related to this document should be directed to staff in the Virginia Department of Education, Office of Dispute Resolution and Administrative Services.

**LOCAL POLICIES AND PROCEDURES
REQUIRED FOR IMPLEMENTING
SPECIAL EDUCATION REGULATORY REQUIREMENTS**

- Required Local Policy**
- Required Local Procedures**
- Required Local Policy OR Procedure**

Listed below are the regulatory requirements for local policies and procedures, as well as those areas in which local educational agencies are permitted to choose whether to address the matter in local policy or in local procedures. Additionally, sample language for policy and procedure statements is provided for each area in italicized form.

Terminology:

Individuals with Disabilities Education Act, 2004 (IDEA)

Regulations Governing Special Education Programs for Children with Disabilities in Virginia, July 7, 2009 (Virginia Regulations)

I. REQUIRED LOCAL POLICY

A. General Policy Statement. 8 VAC 20-81-30 A; 8 VAC 20-81-230 B.1.a.

Local educational agencies (LEAs) are required to have a policy statement that addresses the local educational agency's adherence to the IDEA 2004, implementing federal and state regulations, and state law.

Sample language:

It is the policy of the (name of local educational agency) to adhere to federal and state regulations as they have been promulgated by the United States Department of Education and the Virginia Board of Education to implement special education programs for children with disabilities, consistent with the Individuals with Disabilities Education Act (IDEA). Specifically, these mandates are detailed in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (Virginia Regulations) and any additional documents that the Virginia Department of Education publishes to address federal and state statutes and regulations for delivering special education and related services to children.

B. Other Policies

Local educational agencies are required to develop policy to address:

1. the use of the "developmental delayed" classification. 8 VAC 20-81-80 M

Sample language:

The (name of local educational agency) does/does not use the classification of developmental delay for the detection of students with disabilities for IDEA eligibility. (If it does, the LEA must indicate the age of eligibility requirements in the Virginia Regulations.) This means a disability affecting a child ages two by September 30 through six inclusive.

2. prohibit harassment to children with disabilities. 8 VAC 20-81-100 N.
This may be included with other harassment policy.

Sample language:

The (name of educational agency) prohibits the harassment of children with disabilities in academic and nonacademic settings during the school day and for school-sponsored extracurricular activities.

II. REQUIRED LOCAL PROCEDURES

There are seven (7) areas in the Virginia Regulations that require local procedures. Recall that these procedures are not the same as operational procedures. Generally, Operational Procedures are those provisions that detail the daily processes in which LEAs function. Such procedures are considered fluid because they change from time to time, and need to adapt with expeditious modifications. Standard Procedures, such as represented in this Guidance Document, are more static, consistent with regulatory language, and require review of the Local Advisory Committee and approval of the local school board.

Listed below is the actual regulatory requirement(s) for each section, followed by sample language (in italicized form) to illustrate how the requirement(s) may be written into a local procedure. The sample language meets the requirements for implementation of the regulatory provisions. LEAs have the option of adding more specific requirements.

CHILD FIND PROCEDURES

8 VAC 20-81-50

What the regulations require

A. Child find procedures are required to direct the LEA to:

1. actively and continuously identify, locate, and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who:
 - a. Are highly mobile, such as migrant and homeless children;
 - b. Are wards of the state;
 - c. Attend private schools, including children who are home-instructed or home-tutored;
 - d. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade; and
 - e. Are under age 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.

2. coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.
3. locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools.
 - a. The child find process shall be designed to ensure:
 - (1) The equitable participation of parentally placed private school children, and
 - (2) An accurate count of those children.
 - b. The local school division shall undertake activities similar to the activities undertaken for its public school children.
 - c. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR 300.133.
 - d. The child find process shall be completed in a time period comparable to that for students attending public school in the local educational agency.
 - e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States.
 - (1) If the location of the administration of the private school in which the child attends is different from the school division in which the private school is located, the school division in which the private school is located and which the child attends is responsible for the child find activities.
 - f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, and representatives of parents of parentally-placed private school children with disabilities, on how to implement the child find and evaluation activities.

Sample language for local procedures:

- A. *The (name of local educational agency) will implement on-going and continuous strategies to identify, locate, and evaluate children residing or parentally placed in private schools (including those that are home-schooled or home-tutored) within its jurisdiction who are birth to age 21 and need special education and related service as defined in the Virginia Regulations. Strategies will focus on: children in typical homes; children who are mobile, including those who are homeless or migrant, and who are wards of the state; children who are under 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail for 10 or more days; and children who are suspected of being children with disabilities, even though they are advancing from grade to grade.*
- B. *Strategies to identify children who are parentally placed in private schools will be designed after consultation with representatives of those settings. The strategies will include at a minimum:*
 1. *Information provided on special education eligibility and services on the educational access cable TV channel along with directions on how to refer a child for an evaluation;*
 2. *An annual notice/description of services published in the LEA parent/student handbook;*
 3. *An annual meeting with and information provided to private schools and parents who home-school and home-tutor about special education and how to refer a student for a special education evaluation;*
 4. *Presentations at local civic organizations' meetings such as Kiwanis;*
 5. *An annual letter and meeting with private school/day care providers and parents of children who attend those (including parents who homeschool);*

6. *Screening in each school as required in the Virginia Regulations which includes screening in the areas of speech and language, fine and gross motor, scoliosis, vision, and hearing for new students and at selected grade levels;*
7. *An interagency agreement with Part C providers on referrals to Part B services; and*
8. *An annual update to FAPT participating agencies.*

C. These efforts will ensure an accurate count of these children.

D. These efforts will ensure that the cost associated with carrying out these requirements for parentally-placed private school children, including individual evaluation, will not be considered in determining if the (name of local educational agency) has met its obligations for calculation of its expenditures under federal and state regulations governing special education.

What the regulations require

B. Screening procedures are required to direct the LEA to:

1. document the screening, including timelines, of children enrolled in the division, including transfers from out of state as follows:
 - a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8 VAC 20-250-10.
 - b. Children shall be screened for scoliosis in accordance with the requirements of 8 VAC 20-690-20.
 - c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.
 - d. Children who fail any of the above screenings may be rescreened if the original results are not considered valid.
 - e. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia.
 - f. Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.
2. include all applicable procedural safeguards. These include the following:
 - a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;
 - b. Confidentiality; and
 - c. Maintenance of the student's scholastic record.

Sample language for local procedures:

A. The (name of local educational agency) will assign responsibility for each area of screening to qualified professionals who will assume responsibility for conducting the screening in assigned schools, including recruitment and training of appropriate volunteers and other staff to ensure that the screenings are conducted within the required timelines, for children enrolled in (name of local educational agency), including transfers. A student's pre-school physical examination required under the Code of Virginia will be accepted for the screening if the area(s) of screening to be conducted were included and documented on the physical examination form.

B. Those conducting each area of screening will document results on a screening form and ensure that it is filed in a confidential manner in the student's scholastic record. After the

screening is conducted, the assigned professional will inform parents of the results of the screening. In addition, those responsible for the screening will follow-up on failed screenings by scheduling re-screenings or making referrals for special education evaluations as appropriate.

C. *Screening timelines and additional procedures will be implemented as follows:*

1. *Hearing and vision screenings will be conducted within 60 administrative days of the opening of the school year for all children in grades K, 3, 7, and 10.*
2. *Speech, voice, language, and fine and gross motor will be screened within 60 administrative days of the opening of school for all new enrollees including those in kindergarten and those who transfer into the school division for the first time.*
3. *Scoliosis screening* will be conducted twice during the six year period in which students are in grades 5 through 10. For students in the school division at grade 5, the screening will be conducted in grade 5 and again at grade 10. Students who enter the (name of local educational agency) for the first time after grade 5 will be screened during the year they enter and while in grade 10. If they enter the (name of local educational agency) for the first time during grade 10, they will only be screened once during that year.*
4. *The (name of local educational agency) will provide written notice to parents of the scheduled screening within a reasonable period of time not to exceed (list number of day). The notice shall include the purpose of the screening, when it will occur, and if the child fails the screening, the results of the screening.*
5. *For scoliosis screening, the notice shall include the following additional information:*
 - (a) *a definition of scoliosis,*
 - (b) *a description of how scoliosis is identified,*
 - (c) *a statement describing why it is important to screen for scoliosis,*
 - (d) *a description of the procedures used to screen for scoliosis,*
 - (e) *a description of potential treatments for scoliosis, and*
 - (f) *information on where screenings may be obtained, including the school.*
6. *Parents will also be provided an opt-out form if they wish to exclude their child from the school's scoliosis screening.*

[*NOTE: As an alternative to these sample procedures for scoliosis, school divisions may choose to provide parents with educational information. Please refer to VDOE's "Guidance Document for Local Screening Requirements in Virginia's Public Schools", August 2009, and 8 VAC 20-690-20 for state regulations for information related to scoliosis screening.]

- D. *The (name of local educational agency) will designate persons responsible for ensuring that children are referred to the special education administrator or designee if results from the screening suggest that a referral for evaluation for special education and related services is indicated. The designated persons will ensure that the referral includes the screening results.*

What the regulations require

C. **Referral procedures are required to direct the LEA to:**

1. detail how each school processes in a timely manner all referral requests for children suspected of having a disability.
2. include a team to review records and other performance evidence of the children being referred in order to make recommendations to meet the children's educational and behavioral needs.
 - a. The team shall include:
 - (1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);
 - (2) The principal or designee;
 - (3) At least one teacher; and
 - (4) At least one specialist.
 - b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.
 - c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.
3. include the mechanisms for a referral including a screening process or referrals by school staff, the parent(s), or other individuals.
 - a. Procedures shall specify that the referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.
 - b. If the referral is made to the special education administrator or designee, procedures must indicate that the administrator shall within 3 business days:
 - (1) initiate the evaluation-eligibility process in accordance with regulations at 8 VAC 20-81-60; -70; -80;
 - (2) require that the school-based team review and respond to the request; or
 - (3) deny the request.
 - (a) If the request is denied, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.
4. specify how, in reviewing the child's performance, the team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures.
 - a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.
 - b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services.
5. include timelines for referral process as follows:
 - a. The team shall meet within 10 business days following the receipt of the referral.
 - b. The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.
6. indicate that if the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing.
7. indicate that actions by the team shall be documented in writing and shall include information upon which a decision was based.

Sample language for local procedures:

- A. *Referrals will be accepted in written, electronic, or oral form by each school's principal or designee for children aged two to 21, suspected of having a disability, regardless of whether the child is enrolled in public school. Referrals will be received from any source including parents, school staff, the school-based team, the Virginia Department of Education, any other state agency, or other individuals regarding children who are residents of the locality or who attend a private school that is located within the locality. Once a referral is received, the principal or designee* will ensure that the referral is documented on a referral form which includes the child's name, the reason for the referral and efforts made to address the concerns, the date the referral was received, the name of the person or agency making the referral, the parent's name, and contact information for the parent.*
- B. *Within 10 business days, the referral will be reviewed by a school team which includes the referring source, as appropriate, the principal or designee*, at least one teacher, at least one specialist, and one member who is knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs. Additional professionals may be included as appropriate and based on the reason for the referral.*
- C. *This team will review the reason for the referral and review the child's record and any other performance evidence or data that will be used to make recommendations for educational and/or behavioral needs. The team may determine that: (1) the referral for special education evaluation is not needed for the student, noting that the child is performing adequately; (2) recommend interventions with prescribed review dates; or (3) refer the child for a special education evaluation. All decisions of this team shall be documented in writing and include information upon which a decision was based. Such documentation shall be maintained in the student's scholastic record.*
- D. *The team may use a response-to-intervention approach for identifying recommended strategies which are research-based and will gather data documenting the student's response to the applied intervention. The team will schedule regular meetings to discuss the data and the student's progress and to determine whether additional interventions are needed. The use of these strategies will not delay or interfere with the appropriate referral for special education evaluation which may be administered concurrently with team recommended interventions. Referrals from the team for a special education evaluation will be forwarded to the special education administrator or designee* within 3 days of their decision.*
- E. *If the team decides not to refer the student for a special education evaluation, the parent will be provided with prior written notice indicating that the request for a special education evaluation was refused, the reasons for the decision, a description of other options the team considered and reasons why they were not accepted, a description of the evaluation information (each evaluation procedure, assessment, record or report) used to make the decision, and any other factors that were relevant to the team's decision, and their right to appeal the decision through a due process hearing. The parents will be given a copy of the procedural safeguards.*

F. *If the referral is made to the special education administrator or designee,* within three business days, the special education administrator or designee* will initiate the evaluation-eligibility process, forward the referral to the school team to review and respond to the request, or deny the request. If the referral is made by a parent, the parent will be notified of the decision. If the request is denied, the parent will be provided prior written notice as already described and as is required at 8 VAC 20-81-170 of the Virginia Regulations.*

* Note: Each LEA may wish to specifically designate these roles, such as, “the principal may assign the responsibilities under these procedures to one of the assistant principals”, or definitively direct that the referrals are made to the special education administrator and not provide the option of designee.

REFERRAL FOR INITIAL EVALUATION FOR SPECIAL EDUCATION

8 VAC 20-81-60

What the regulations require

Procedures for the referral for initial evaluation for special education are required to direct the LEA to:

1. include all children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability.
2. include that the referral be made to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.
3. allow referrals to be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, other individuals, or a school-based team in accordance with 8 VAC 20-81-50 D.5.b. (34 CFR 300.301(b)).
4. require the referring party to inform the special education administrator or designee why an evaluation is requested and efforts that have been made to address the concerns.
5. allow the referral to be made in oral or written form.
6. require, if the referral comes from a source other than the school-based team, the special education administrator, or designee, to:
 - a. initiate the initial evaluation procedures;
 - b. refer the child to the school based team to review and respond to the request under 8 VAC 20-81-50 D.3.b(2); or
 - c. deny the request, and provide prior written notice in accordance with 8 VAC 20-81-170.
7. require the special education administrator, or designee, to:
 - a. record the date the referral was received, reason for referral, and names of the person or agency making the referral;
 - b. implement procedures for maintaining the confidentiality of all data;
 - c. provide written notice and procedural safeguards to inform the parent(s) in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:
 - (1) The referral for evaluation,
 - (2) The purpose of the evaluation, and
 - (3) Parental rights with respect to evaluation and other procedural safeguards.

- d. inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child.
 - e. secure informed consent from the parent(s) for the evaluation.
 - f. ensure that all evaluations consist of procedures that:
 - (1) Gather relevant functional, developmental and academic information about the child to determine if the child is a child with a disability; and
 - (2) Are sufficiently comprehensive to identify all of the child's special education and related services needs, and educational needs.
 - g. ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action. The time frame shall not apply to the local school division if:
 - (1) The parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or
 - (2) If the child enrolls in a school served by the local school division after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the local school division is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and the local school division where the child is enrolled in school agree to a specific time when the evaluation will be completed.
 - h. allow for the parent and eligibility group to agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days.
 - i. provide prior written notice in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through due process hearing procedures if the decision is not to evaluate.
8. ensure that these parental consent requirements are followed:
- a. parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.
 - b. parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.
 - c. the LEA shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.
 - d. for initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local school division is not required to obtain parental consent to determine whether the child is a child with a disability if:
 - (1) despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;
 - (2) the rights of the parents of the child have been terminated in accordance with Virginia law; or
 - (3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

The local school division shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.
 - e. if the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.
 - f. if a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the local school division may not use mediation or due process to pursue the initial evaluation.

Sample language for local procedures:

- A. *The (name of local educational agency) will ensure that these referral procedures apply to all children, aged two to 21, inclusive, who are residents in accordance with the Virginia Regulations, whether enrolled in public school or not, who are suspected of having a disability.*
- B. *All referrals for initial special education evaluations will be processed using the referral procedures detailed above. Referrals from a school-based team or referrals accepted and initiated by the special education administrator/designee will result in the start of the process of determining eligibility for special education and related services.*
 - 1. *The special education administrator/designee will ensure to record the date the referral was received, reason for referral, and names of the person or agency making the referral.*
- C. *Once the referral for a special education evaluation is made by the school-based team or accepted by the special education administrator/designee, prior written notice indicating that the child has been referred for an evaluation and the purpose of the evaluation along with the procedural safeguards notice will be provided to the parents in their native language or primary mode of communication. Parents will also be informed of the procedures used to determine what evaluation data is needed and request any evaluation information that the parent may have on the child.*
- D. *Evaluations to be administered will be identified and will be included to enable the school division to gather relevant functional, developmental, or academic information about the child so the eligibility team will be able to determine if the child is a child with a disability in need of special education and related services. The evaluation process will be sufficiently comprehensive to enable the school division to determine, if the child is eligible, the child's special education and related services needs, as well as educational needs. The principal/designee or special education administrator/designee will secure informed consent for the evaluation process prior to initiating the evaluations.*
- E. *Professionals will be assigned to complete evaluations consistent with their expertise, and will be provided with a deadline for completion to ensure that eligibility decisions are made within 65 business days from the receipt of the referral for the special education evaluation. The 65 business day timeline may be extended if the parent and eligibility team agree in writing that additional time is needed to obtain data. This timeline does not apply in the following circumstances:*
 - 1. *for those students whose parents repeatedly fail to produce the child for the evaluation;*
or
 - 2. *for a child that enrolls in the (name of local educational agency) after the 65 business days has begun in a previous school division, but prior to a determination by the child's previous school and/or school division as to whether the child is a child with a disability, the (name of local educational agency) will work to complete the evaluation expeditiously. This exception only applies if (name of local educational agency) is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and (name of local educational agency) agree to a specific time when the evaluation will be completed.*

- F. *The staff will comply with all requirements related to confidentiality of student records throughout the evaluation and eligibility process.*
- G. *The (name of local educational agency) acknowledges the following parent consent requirements:*
1. *parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.*
 2. *parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.*
 3. *the (name of local educational agency) shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.*
 4. *for initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the (name of local educational agency) is not required to obtain parental consent to determine whether the child is a child with a disability if:*
 - (a) *despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;*
 - (b) *the rights of the parents of the child have been terminated in accordance with Virginia law; or*
 - (c) *the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.**The (name of local educational agency) shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.*
 5. *if the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the (name of local educational agency) may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The (name of local educational agency) does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.*
 6. *if a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the (name of local educational agency) may not use mediation or due process to pursue the initial evaluation.*
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EVALUATION AND REEVALUATION
8 VAC 20-81-70

What the regulations require

Procedures for evaluation and reevaluation are required to direct the LEA to:

1. establish how needed evaluation data for initial evaluation or reevaluation is determined.
2. use a group that is comprised of the same individuals as an IEP team and other qualified professionals, as appropriate, to:
 - a. Review existing evaluation data on the child, including:
 - (1) Evaluations and information provided by the parent(s) of the child;
 - (2) Current classroom-based, local, or state assessments and classroom-based observations; and
 - (3) Observations by teachers and related services providers; and
 - b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine:
 - (1) Whether the child is, or continues to be, a child with a disability;
 - (2) The present educational needs of the child;
 - (3) The child's present level of academic achievement and related developmental needs;
 - (4) Whether the child needs or continues to need special education and related services; and
 - (5) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
3. determine whether the group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall meet the requirements of 8 VAC 20-81-110 E.2.a.
4. require that if the group and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency shall provide the child's parent(s) with prior written notice, including information regarding the determination and the reasons for it; and the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.
 - a. indicate that the local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.
 - b. specify that the child's parent(s) has the right to resolve a dispute through mediation or due process as described in the Virginia Regulations.
 - c. indicate that a review of the information in conformity with the required process shall be considered the evaluation if no additional data are needed.
 - d. indicate that if the group determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8 VAC 20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.
5. ensure that assessments and other evaluation materials used to assess a child under this chapter:
 - a. are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - b. are provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
 - c. are used for the purposes for which the assessments or measures are valid and reliable;
 - d. are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.
 - e. include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 - f. are selected and administered so as to best ensure that if an assessment is administered to a child with impaired sensory, motor, or communication skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).

- g. ensure that technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
6. ensure that materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
 7. ensure that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
 8. ensure that the assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
 9. require that if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.
 10. indicate whether the use of a nonstandardized assessment administered by qualified personnel may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.
 11. ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
 12. ensure that no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.
 13. specify that if the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.
 14. require that for a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
 15. detail that each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.
 - a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.
 - b. A complete audiological assessment, including tests that will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.
 16. require that a written copy of the evaluation report(s) be provided at no cost to the parent(s).
 - a. The evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility.
 - b. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.

17. require that assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 8 VAC 20-81-60 B.1.g., to ensure prompt completion of full evaluations.
18. ensure that a reevaluation is conducted:
 - a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;
 - b. If the child's parent(s) or teacher requests a reevaluation; or
 - c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.
19. prohibit a reevaluation more than once a year unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the parent(s) with prior written notice in accordance with 8 VAC 20-81-170.
20. ensure that informed parental consent is received before conducting any reevaluation of a child with a disability.
 - a. If the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent(s) has failed to respond, the local educational agency shall proceed as if consent has been given by the parent(s). Reasonable measures include providing notice to the parent(s) in writing (or by telephone or in person with proper documentation).
 - b. If the parent(s) refuses consent, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures. The local educational agency does not violate its obligation under this chapter if it declines to pursue the reevaluation.
21. may specify that parental consent is not required before:
 - a. Review of existing data as part of an evaluation or reevaluation;
 - b. A teacher's or related service provider's observations or ongoing classroom evaluations; or
 - c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
22. specify that if a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8 VAC 20-81-150 for parentally placed students.
23. require that the reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.
24. require that if a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days of the receipt of the referral by the special education administrator or designee for the evaluation.
25. may allow for the parent and eligibility group to agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days.
26. specify that the local educational agency is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency must include the provision of prior written notice to the parent in accordance with 8 VAC 20-81-170.

Sample language for local procedures:

- A. *The school-based team, consistent with the make-up of an IEP team, will determine which evaluation components are needed to provide data required for the eligibility team to make a decision. In order to make this determination, the team will meet to review existing evaluation data, including evaluations and information provided by the parents and current classroom-based, local, and/or state assessments and classroom-based observations, and observations by teachers and related services providers. The parent will be provided written notice of the meeting at least five business days prior to the meeting to ensure that the parent will have an opportunity to participate in the review. The notice will include the purpose, date, time, and location of the meeting and who will be in attendance, and it will inform the parent that both the (name of local educational agency) and the parent may invite to the meeting other individuals, including related services personnel, who have knowledge or expertise about their child, if appropriate.*
- B. *Based on the information available, the team including the parent(s) will identify what additional data is needed, if any, to determine the following:*
1. *whether the child is (or continues to be) a child with a disability,*
 2. *the present educational needs of the child,*
 3. *the child's present level of academic achievement and related developmental needs,*
 - a. *whether the child needs (or continues to need) special education and related services, and*
 - b. *whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals included in the child's IEP and to participate, as appropriate, in the general education curriculum.*
- C. *If it is determined that additional data is needed, school personnel will ensure that tests and other evaluation materials will be completed, as necessary, to obtain the data to address issues B. 1-3, above.*
- D. *If no additional data is needed to address the issues above, the school-based team will provide the parent(s) with prior written notice of the decision. The prior written notice will meet all requirements detailed in the Virginia Regulations at 8 VAC 20-81-170. The notice will include information regarding the determination and the reasons for it, and the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. In addition, the school-based team will document that the parent was informed of the following:*
1. *the (name of local educational agency) is not required to conduct an evaluation if the team has determined that it has enough information to determine whether the child is or continues to be a child with a disability and to determine the child's educational needs, unless the parent(s) request an evaluation for these specific purposes;*
 2. *a review of the information that conforms with the required process will be considered the evaluation if no additional data are needed;*
 3. *the parent has the right to appeal the decision through the use of mediation or due process proceedings.*
- E. *If the school-based team determines not to evaluate a child suspected of a disability, it must provide the parent with a prior written notice that meets all requirements detailed in the*

Virginia Regulations, at 8 VAC 20-81-170, including the parent's rights to appeal the decision through due process proceedings.

- F. School personnel will obtain informed parental consent before conducting any evaluations or reevaluations. For a reevaluation, if the (name of local educational agency) can demonstrate reasonable measures to obtain consent and that the child's parent failed to respond, the (name of local educational agency) will proceed with the evaluation as if consent has been received. To demonstrate reasonable measures, the (name of local educational agency) will have provided notice to the parent in writing at least twice and will have contacted the parent by phone if the parent has a phone.
 - 1. If the parent refuses consent, the (name of local educational agency) may pursue those evaluations by using due process hearing procedures or mediation, but the school division is not required to do so.*
 - 2. Consent will not be required for any of the following: If the team decides that a review of existing data is sufficient; for a teacher or related service provider to report their observations of the child or ongoing classroom evaluations; or before administering a test or evaluation that is administered to all children, unless parental consent is required from all parents prior to the administration of the test.**

- G. A variety of evaluation or assessment tools and strategies, sufficiently comprehensive to identify all of the child's special education and related services needs (whether or not commonly linked to the disability category used for the child's classification), will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).
 - 1. This information will be used to determine whether the child is a child with a disability, the child's educational needs, and the content of the child's IEP. No single measure will be used as a sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.**

- H. Initial evaluations and reevaluations other than the triennial shall be completed so that the eligibility decision can be made within 65 business days from the receipt of the referral by the Eligibility Coordinator, who serves as the designee for (name of local educational agency) Special Education Director. If the parent and the (name of local educational agency) agree, the 65 business day timeline may be extended in order to obtain information that could not be obtained during the 65 business day timeline. This agreement must be in writing. Triennial reevaluations will be initiated in sufficient time to ensure that an eligibility determination can be completed within three years of the anniversary date of the previous eligibility decision.*

- I. All evaluation assessments and materials will be selected and administered to ensure no racial or cultural bias. In addition, evaluations will be provided and administered in the child's native language and in ways that are most likely to yield accurate information on*

what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

- 1. All assessments will be used for the purposes for which they are valid and reliable and will be administered by personnel that are trained and knowledgeable regarding the instructions provided by the producer of the assessments.*
 - 2. Assessment tools will be selected to assess specific areas of educational need rather than produce a single general intelligence quotient.*
 - 3. If the child has impaired sensory, motor, or communication skills, assessments will be used that take that into consideration so as to measure accurately the child's aptitude or achievement or whatever the test is designed to assess, rather than reflecting the impairment in the child's sensory, motor, or communication skills.*
 - 4. Assessments that are used to assess the relative contribution of cognitive, behavior, physical or developmental factors will be technically sound.*
 - 5. If the child being assessed is limited in English proficiency, assessments will be selected and administered to ensure that they measure the extent that the child has a disability and needs special education, rather than measuring the child's English skills.*
- J. If assessments are conducted under non-standard conditions, those conditions, including the extent to which the assessment varied from the standard conditions, will be included in the evaluation report and whether the nonstandardized assessment administered by a qualified professional is useful in the determination of whether the child is a child with a disability and is useful in contributing to the contents of the child's IEP.*
- K. If the evaluation requires assessments in more than one area relating to the suspected disability, a team of professionals, including at least one teacher or other specialist with knowledge in the areas of the suspected disability, will complete the assessments. A part of the evaluation process will include an observation focused on academic performance in the general education classroom that will be made by at least one professional on the evaluation team other than the child's teacher. If the child is not school-age, the observation will be conducted in an environment appropriate for a child of that age which may include the home or a preschool setting.*
- L. All areas related to the suspected disability will be assessed by qualified professionals which may include, as appropriate, health, vision, hearing, social and emotional development, general intelligence, academic performance, communication skills, motor skills, and adaptive behavior. Evaluation components may include educational, medical, sociocultural, psychological, or developmental assessments. Hearing, however, will be screened for all children during an initial eligibility evaluation. If the child is hearing impaired or deaf, or if the child fails two hearing screening tests, a complete audiological evaluation, including tests to assess inner and middle ear functioning will be conducted.*
- M. The evaluation reports will be available to parents at the student's school at least two business days prior to the meeting to determine eligibility. A written copy of the reports will be provided to parents prior to or at the meeting where the eligibility team reviews the*

reports, or immediately following the meeting, but no later than 10 days after the meeting. Copies of the evaluation reports will be provided at no cost to parents.

- N. If a child transfers to the (name of local educational agency) during the evaluation process, the (name of local educational agency) will work with the child's previous school and/or school division to ensure that the child's evaluation and eligibility determination process is promptly completed. In this instance, the 65 business timeline for the completion of the evaluation and eligibility process may be extended if the following requirements are met:
1. the parent and the school-based team agree to extend the timeline and set a mutually-agreeable date upon which the evaluation and eligibility process will be completed, and
 2. sufficient progress is being made to ensure a prompt completion of the evaluation.
- O. Reevaluations will be conducted at least every three years, unless the (name of local educational agency) and the parent agree that a reevaluation is not necessary.
- P. Reevaluations may be conducted more frequently if the (name of local educational agency) determines that it needs new information to determine child's educational or related services needs, including improved academic achievement and functional performance, or if the parent(s) or teacher(s) request a reevaluation. Upon the request from a parent or teacher, the child's school-based team, consistent with the make-up of the IEP team, will convene to discuss the request and determine what, if any, evaluation components will be conducted. Evaluations will not be conducted more than once per year unless the parent and (name of local educational agency) agree otherwise. Prior written notice that meets the requirements in the Virginia Regulations, at 8 VAC 20-81-170 C., will be provided the parent of the decision regarding the reevaluation request.
- Q. For a child who is home-schooled, home-tutored, or who is parentally-placed in a private school at the parent's expense, the (name of local educational agency) is not permitted to use mediation or due process to pursue consent from a parent who refuses to provide consent for an evaluation or reevaluation, or who fails to respond to a request for consent. In this instance, the child will not be evaluated, and will not be eligible for equitable services as a parentally placed student under 8 VAC 20-81-150 of Virginia Regulations.
- R. The (name of local educational agency) will not be required to evaluate a student solely because the student is graduating with a standard or advanced diploma, even though this will be considered a change in placement. Prior written notice, however, will be provided to parent(s) informing them that upon graduation the child will no longer be eligible for special education and related services. In addition, the (name of local educational agency) will ensure that all other requirements of the Virginia Regulations, at 8 VAC 20-81-170, regarding prior written notice, will be met.
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ELIGIBILITY DETERMINATION

8 VAC 20-81-80

What the regulations require

Procedures for eligibility determination are required to direct the LEA to:

1. ensure that the determination that a child is eligible for special education and related services is made on an individual basis by a group that may be an IEP team, as defined in 8 VAC 20-81-110, as long as the other requirements in 8 VAC 20-81-80 are met and the notice requirements of 8 VAC 20-81-170 are met. The group shall include, but not be limited to:
 - a. Local educational agency personnel representing the disciplines providing assessments;
 - b. The special education administrator or designee;
 - c. The parent(s);
 - d. A special education teacher;
 - e. The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and
 - f. At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.
- g. In addition, the determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:
 - (1) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;
 - (2) Interpret assessment and intervention data, and apply critical analysis to those data; and
 - (3) Develop appropriate educational and transitional recommendations based on the assessment data.
2. ensure that upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of 8 VAC 20-81-110.
3. ensure that in interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:
 - a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
 - b. Ensure that information from all these sources is documented and carefully considered.
4. require that the group provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.
5. ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty. The eligibility group shall:
 - a. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - b. Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8 VAC 20-81-170.
 - c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.
6. ensure that a child is not determined to be eligible if the child does not otherwise meet the eligibility criteria, or the determinant factor is:
 - a. Lack of appropriate instruction in reading, including the essential components of reading instruction:

- (1) Phonemic awareness,
 - (2) Phonics,
 - (3) Vocabulary development,
 - (4) Reading fluency, including oral reading skills, and
 - (5) Reading comprehension strategies;
 - b. Lack of appropriate instruction in math; or
 - c. Limited English proficiency.
7. require that the local educational agency provide the parent with a copy of the documentation of the determination of eligibility at no cost. This documentation shall include a statement that addresses:
- a. Whether the child has a specific disability.
 - b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.
 - c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
 - d. The educationally relevant medical findings, if any.
 - e. The instructional strategies used and the student-centered data collected if the child has participated in a response to scientific, research-based intervention process. This document shall also include:
 - (1) The local educational agency's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (2) The strategies that were used to increase the child's rate of learning; and
 - (3) The parent's right to request an evaluation.
 - f. For identification of a child with a specific learning disability, whether the data is consistent with the eligibility requirements of 8 VAC 20-81-80 T.2.a. and T.2.b., the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and
 - (1) the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or
 - (2) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards or intellectual development.
 - g. For identification of a child with a specific learning disability, whether the group's determination is consistent with the requirements of 8 VAC 20-81-80 T.2.c.
8. ensure that the eligibility group considers, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with §1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel. There shall be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.
9. require that the eligibility group work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall be required to submit a written statement presenting that member's conclusions.
10. ensure that the local educational agency obtains written parental consent for the initial eligibility determination. Thereafter, written parental consent shall be secured for any change in categorical identification in the child's disability.
11. require the eligibility group to develop a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. The written summary must include any written statement from a member whose conclusion differs from the other member's determination. The summary statement may include other recommendations. The written summary shall be maintained in the child's scholastic record.
12. ensure that the written summary is forwarded to the IEP team, including the parent, upon determination of eligibility. The summary statement may include other recommendations.

13. indicate whether, for reevaluations, the local educational agency is going to require the IEP team to meet if the eligibility group determines that there is not a change to the child's eligibility for special education and related services. The IEP team is not required to convene, unless the parent requests that the IEP team meets.
14. require that a child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team.
15. ensure that a child, aged two, previously participating in early intervention services assisted under Part C of the Act, shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age two, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child.
16. specify that when determining whether a child is eligible, the local educational agency uses the criteria included in 8 VAC 20-81-80 to determine whether a child has a disability, and ensures that there is documented evidence that, by reason of the disability, the child needs special education and related services.
17. specify whether the local educational agency uses a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and/or uses other alternative research-based intervention and procedures.
18. indicate that for children found not eligible for special education, information relevant to instruction will be provided to the child's teachers or any appropriate committee. Parental consent to release information will be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence.
19. ensure that, if the school division decides that a child is not eligible for special education and related services, prior written notice in accordance with 8 VAC 20-81-170 is given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures.

Sample language for local procedure:

- A. *Following the completion of the administration of the assessments and other evaluation materials, or after a determination by the school-based team that additional data was not needed, the eligibility team will determine if the child is or continues to be a child with a disability and the child's educational needs. The eligibility decision must be made on an individual basis.*
- B. *The eligibility team will, at a minimum, meet the team composition of the IEP team. This team must include personnel representing the disciplines providing the assessments, the school principal or assistant principal (serving as the special education administrator's designee), the parent(s); a special education teacher; at least one general education teacher of the child (or someone qualified to teach the child of that age if the child does not have a teacher or if the child is a preschooler); at least one person qualified to conduct individual diagnostic examination (such as a school psychologist, speech pathologist, or remedial reading teacher). This team will be qualified to conduct individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development, as appropriate, interpret the assessment and intervention data, apply critical analysis to the data, and develop appropriate educational and transitional recommendations based on the assessment data. The eligibility team will provide the parent with procedural safeguards in accordance with the Virginia Regulations,*

at 8 VAC 20-81-170, including the notice requirements, when determining eligibility and in ensuring the confidentiality of records.

- C. *When interpreting data to determine whether or not a child is a child with a disability and to determine the child's educational needs, the team will carefully consider, and document its use of information from a variety of sources, including all of the assessments prescribed by the school-based team for the evaluation, aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The team may also use information obtained as a result of the child's participation in the school division's response to intervention process. (For additional information regarding the (name of local educational agency)'s response to intervention procedures, please see the (name of local educational agency)'s "Response to Intervention Handbook".) The team will also consider any evaluation information provided by the parent(s).*

- D. *Prior to determining a child's eligibility, the eligibility team must also review information from an observation of the child. The observation must have occurred in the child's learning environment (including the general education classroom setting), and it must have documented the child's academic performance and behavior in the area of difficulty. The observation may have occurred in routine classroom instruction and monitoring of the child's performance before the child was referred for an evaluation. In the alternative, at least one member of the eligibility team must conduct an observation of the child's academic performance in the general education classroom after the child was referred for an evaluation and parental consent was obtained. (For preschool children, or a student out of school, the team member shall observe the child in an environment appropriate for a child of that age.)*

- E. *The team will analyze the data against the eligibility criteria. The team will only find a child eligible for special education and related services if the child meets the eligibility criteria to be a child with a disability, and if the team finds that there is documented evidence that as a result of the child's disability, the child needs special education and related services. Lack of appropriate instruction in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies), a lack of appropriate instruction in math, or a child's limited English proficiency will be considered and, if these are determining factors, the child will not be found eligible.*

- F. *The eligibility team will consider, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with the requirements of the No Child Left Behind Act, at §1111(b)(8)(D) and (E), including that the instruction was delivered by qualified personnel. There must be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.*

- G. *The team will work toward consensus in reaching its decision. If the team does not reach consensus and if the decision does not reflect a member's conclusion, then the team member will be required to submit a written statement indicating the member's conclusion. Written parental consent will be secured for the initial eligibility determination and any change in categorical identification.*
- H. *A child, aged two, who was previously served by Part C, must meet the criteria of Part B in order to be provided special education and related services. For a child served by Part C after age two, and whose third birthday occurs during the summer, the IEP team for an eligible child will determine when the child will begin to receive Part B services, thus transitioning from Part C to Part B.*
- I. *A child will only be provided related services when found eligible for special education. Once a child is found eligible for special education, the IEP team will make decisions about the child's need for related services, and may request an evaluation, if determined necessary. All information presented will be documented and summarized during the meeting. A summary of deliberations will include the basis for the determination of eligibility and a written statement from any member who disagrees with the team's conclusion. The summary may include other recommendations, will be maintained in the child's scholastic record, and will be forwarded to the IEP team, including the parent, following the eligibility determination.*
- J. *For a child found not eligible, information relevant to instruction will be provided to the child's teachers or any appropriate committee. In addition, prior written notice, in accordance with 8 VAC 20-81-170, will be given to the parent(s) including the parent(s)' right to appeal the decision through the due process hearing procedures. If the child is parentally-placed in a private school within the (name of local educational agency), but the parent resides in a different locality, parent consent will be secured before sharing the information with another local educational agency.*
- K. *The eligibility team must provide the parent at no cost a copy of all of the documentation regarding the eligibility determination. This documentation must include a statement of:*
1. *Whether the child has a specific disability.*
 2. *The basis for making the determination including an assurance that the eligibility determination was made in accordance with the Virginia Regulations regarding determining eligibility and educational need.*
 3. *The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.*
 4. *The educationally relevant medical findings, if any.*
 5. *If the child participated in the division's response to intervention process, a statement of the instructional strategies used and the student-centered data collected during that process. This document must also include:*
 - (a) *Information regarding the school division's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;*

- (b) The strategies that were used to increase the child's rate of learning; and*
- (c) The parent's right to request an evaluation.*

(For additional information regarding the school division's response to intervention procedures, please see the school division's "Response to Intervention Handbook".)

- 6. *If a child is determined eligible as a child with a specific learning disability, document that the eligibility team's determination was consistent with each of the requirements of 8 VAC 20-81-80 T. 2.*

- L. *Within 30 days of an initial determination of eligibility, an IEP must be developed for the child in accordance with the requirements in the Virginia Regulations, at 8 VAC 20-81-110. Following a reevaluation, unless there is a change in the child's eligibility for special education and related services or a change in the child's educational needs, or unless the parent requests a meeting to review and revise the child's IEP, the IEP team is not required to convene.*

SURROGATE PARENTS

8 VAC 20-81-220

What the regulations require

Procedures for assignment of surrogate parents are required to direct the LEA to:

1. be designed to determine whether a child needs a surrogate parent.
2. detail how surrogate parents are assigned to an eligible child and ensure that the surrogate parent is appointed by the local educational agency superintendent or designee within 30 calendar days of the determination that a surrogate parent is necessary.
3. ensure that the following are notified in writing once the appointment has been made:
 - a. The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
 - b. The surrogate parent-appointee; and
 - c. The person charged with responsibility for the child.
4. assign the surrogate parent to serve for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.
5. extend the appointment as needed, consistent with timelines required by law, if the child requires the services of a surrogate parent during the summer months.
6. include the requirement to determine, at the conclusion of each school year, whether the appointment of surrogate parents will be renewed or not renewed following a review by the local educational agency.
7. establish the conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:
 - a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8 VAC 20-81-180;

- b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;
 - c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
 - d. The parent(s), whose whereabouts were previously unknown, are now known and available; or
 - e. The appointed surrogate parent is no longer qualified to serve as a surrogate parent in accordance with 8 VAC 20-81-220 E.
8. include a provision for developing and maintaining a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.
 9. specify that individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate eligibility. Other factors that may be considered include:
 - a. appointment of a relative to serve as surrogate parent; and
 - b. the appropriateness of the child's participation in the selection of the surrogate parent.
 10. ensure that an individual appointed as a surrogate has no personal or professional interest that conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child, is not an employee of the Virginia Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child; and is of the age of majority.
 - a. A person who otherwise qualifies to be a surrogate parent is not an employee solely because the person is paid by the agency to serve as a surrogate parent.
 - b. If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate will meet the other qualifications for a surrogate parent, and may serve only until a surrogate parent meeting all of the surrogate parent qualifications can be assigned.

Sample language for local procedures:

- A. *The special education administrator/designee for the (name of local educational agency) will be responsible for identifying those who are willing and qualified to serve as surrogate parents.*
- B. *To be qualified as a surrogate parent, an individual must have no personal or professional interest that conflicts with the interest of the child, have knowledge and skills that will ensure adequate representation of the child, be of the age of majority, and not be an employee of the Virginia Department of Education, this school division, or any other agency that is involved in the education or care of the child. If otherwise qualified, a person will not be considered to be an "employee" solely because they are paid to serve as a surrogate parent.*
- C. *If the child is an unaccompanied homeless youth, the special education administrator/designee may permit appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate must meet the other qualifications for a surrogate parent, and may serve only until a surrogate parent meeting all of the qualifications for a surrogate parent can be assigned.*

- D. While every effort will be made to secure individuals willing to serve as surrogates from within the (name of local educational agency), individuals from outside the (name of local educational agency) may be secured if necessary to ensure that someone qualified is available to represent the needs of the students in meetings pertaining to special education eligibility and services. In addition, others may be eligible once a need is identified, such as a child's relative, depending on the child's needs, and the availability of qualified persons familiar with the child and who would otherwise qualify. The special education administrator/designee may involve the child in the selection, if appropriate.
- E. When a school cannot identify or with reasonable efforts locate someone who qualifies as a "parent" in accordance with the Virginia Regulations, the school will contact the special education administrator/designee who will confirm the need for a surrogate and appoint a surrogate within 30 calendar days for the student, if one is needed. Once appointed, the child (as appropriate to the disability), the appointed surrogate parent, and the person charged with the responsibility for the child will be notified in writing that the appointment has been made. The surrogate parent will be assigned to serve for the duration of the school year unless a shorter period of time is appropriate given the content of the child's IEP. At the end of each school year, following a review, a determination will be made regarding whether the appointment of a surrogate parent will be renewed or not. Appointments may also be extended as needed, if the child requires the services of a surrogate during the summer months.
- F. Termination of a surrogate parent will occur when the child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed in accordance with the transfer of rights procedures; when the child is no longer eligible for special education services and the surrogate parent has consented to the termination of services; when legal guardianship has transferred to a person who can serve as the parent in special education matters; when the parent whose whereabouts previously were unknown is now known and the parent is available; or when the appointed surrogate is no longer qualified.
- G. If a surrogate wants to challenge the surrogate qualifications, or if the surrogate is terminated prior to the end of the appointment and wishes to appeal the decision, a request for a hearing may be made to the division superintendent who will convene a panel which shall include a principal, a school board member, and the school board attorney who will hear evidence presented and make a decision.
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III. REQUIRED LOCAL POLICY OR PROCEDURE

Local educational agencies may establish the following aspects of special education in either a policy statement or procedure. If the LEA addresses the provision in its policy, corresponding

procedures are not required, unless the LEA chooses to do so. The LEA may further address the policy or procedural provision in its operational procedures.

A. 8 VAC 20-81-170 J

Limitations on the use of audio recordings and whether the use of video recording is allowed or prohibited.

Sample language:

The (name of educational agency) limits the use of audio recordings to only those situations required in the Virginia Regulations.

The (name of educational agency) also allows/does not allow the use of video recording for all situations in which audio recordings are required in the Virginia Regulations.

B. 8 VAC 20-81-50 D.4; 8 VAC 20-81-80 D.6

The use of response to scientifically-based interventions to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility.

Sample language:

The (name of educational agency) uses a variety of sources of evidence, including response to scientifically-based interventions, to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility. The (name of educational agency), however, will not delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented.

C. 8 VAC 20-81-110 D

Whether the LEA will allow or prohibit an IEP team member being excused from a meeting with the consent of both the LEA and the parent.

The (name of educational agency) permits required members of the IEP team to be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and (name of educational agency) consent in writing to the excusal, and if prior to the meeting, the member provides the parent and the IEP team written input into the development of the child's IEP.

Or

The (name of educational agency) does not permit required members of the IEP to be excused from attending IEP team meetings, in whole or in part.

D. 8 VAC 20-81-110 B.9

Whether the LEA will allow or prohibit IEP amendments being made without a meeting.

After a child's annual IEP team meeting for the school year, the parent(s) and the (name of educational agency) may agree to develop a written amendment to a child's IEP without convening an IEP meeting. If changes are made to a child's IEP without a meeting, the (name of educational agency) must ensure that the child's IEP team is informed of the changes, and that the parent, upon request, is provided a revised copy of the child's IEP with the amendment incorporated. This process is not a substitute for the required annual IEP meeting.

Or

If a child's IEP needs amendment after a child's annual IEP team meeting for the school year, an IEP team meeting shall be scheduled to make the changes.

E. 8 VAC 20-81-20 #25

Disproportionality:

Local educational agencies are required to address significant disproportionality based on race and ethnicity in the identification and placement of students with disabilities. Local educational agencies are required to publicly report on the revision of policies, procedures, and practices addressing disproportionality.

Sample language:

In the event that (name of local educational agency) is found to have significant disproportionality based on race and ethnicity in the identification and placement of students with disabilities, it will review and revise its policies, procedures, and practices to ensure compliance with disproportionality requirements. Such changes will be reported publicly. The (name of local educational agency) will respond to the Virginia Department of Education's reporting requirements for LEAs on local data relative to disproportionality, and as necessary, corrective measures.

F. 8 VAC 20-81-20 #31

Long-term Removals

Local educational agencies are required to address discrepancies in the rate of long-term suspensions and expulsions of students with disabilities, as compared to the rates for nondisabled children, including data disaggregated by race and ethnicity.

Sample language:

In the event that (name of local educational agency) is found to have discrepancies in the rate of long-term suspensions and expulsions of students with disabilities (including by race or ethnicity), as compared to the rates for children without disabilities, the (name of local educational agency) will review its policies, procedures, and practices related to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that students with disabilities are not inappropriately long-term suspended or expelled. The (name of local educational agency) will respond to the Virginia Department of Education's reporting requirements for LEAs on

local data relative to long-term suspensions and expulsion of students with disabilities, and as necessary, corrective measures.

G. 8 VAC 20-81-30 I
Residency

Local educational agencies may adopt a provision that allows children with disabilities who are not residents of Virginia but who are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division to be admitted to the school division for special education and related services. It may also charge tuition subject to the provisions of § 22.1-5 of the Code of Virginia.

Sample language:

The (name of local educational agency) allows children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division to be admitted to the school division for special education and related services. Tuition will be charged based as with any other non-resident student who attends on tuition.

[Note: Since this is a permissive regulation, LEAs are not required to adopt this provision in their local policy or procedures.]

H. 8 VAC 20-81-170 G.7 & 9
Hearing – Student Records

Local educational agencies are required to provide, upon request, an opportunity for a hearing to challenge information in the child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. The hearing must be conducted in accordance with procedures listed in the Family Educational Rights and Privacy Act. As such, the local educational agency may either develop local procedures for such a hearing process or obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8 VAC 20-81-210 H.

Sample language:

Upon parental request, to resolve disputes regarding the child's education records, the (name of local educational agency) will convene a hearing, in accordance with the Virginia special education hearing officer system specified in 8 VAC 20-81-210, to ensure that the information included in a child's education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

*Note: If the local educational agency designs its own procedures, those procedures must specify how the dispute will be handled and the hearing conducted.

I. 8 VAC 20-81-330
Section 504 Grievance Procedures

Local educational agencies are required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints under Section 504. The local educational agency may adopt the special education due process hearing system or develop its own procedures.

Note: Unlike IDEA-related due process hearings, VDOE is not responsible for reimbursing LEAs half of the required costs associated with 504 hearings. Required costs are those costs associated with the hearing officer and any other costs incurred and requested by the hearing officer or school division.

Sample language:

The (name of local educational agency) will use the Virginia special education hearing officer system specified in 8 VAC 20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability under Section 504. Required costs associated with such hearings will be incurred by the (name of local educational agency).

*Note: If the local educational agency designs its own procedures, those procedures must specify how the dispute will be handled and the hearing will be conducted.

SPECIAL NOTE: All of the provisions in this document apply to the State Operated Programs, with the exceptions of Items E, F, and G above.
